

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

USA,)	
)	
PLAINTIFF,)	
)	
VS.)	CR18-00050-JAK
)	
SHIH, ET AL.,)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, MAY 20, 2019, 1:30 PM

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LOS ANGELES, CALIFORNIA; MONDAY, MAY 20, 2019

1:30 PM

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THE COURT: CR18-00050, USA VERSUS YI-CHI
SHIH.

MS. HEINZ: GOOD AFTERNOON, YOUR HONOR.
JUDITH HEINZ ON BEHALF OF THE UNITED STATES.

MR. ROLLINS: GOOD AFTERNOON, YOUR HONOR.
WILL ROLLINS ON BEHALF OF THE UNITED STATES.

MR. SHOBAKI: GOOD AFTERNOON, YOUR HONOR.
KHAL SHOBAKI ON BEHALF OF THE UNITED STATES.

MR. HUGHES: GOOD AFTERNOON, YOUR HONOR.
JAMES HUGHES ON BEHALF OF THE UNITED STATES.

MS. SARTORIS: GOOD AFTERNOON, YOUR HONOR.
MELANIE SARTORIS ON BEHALF OF THE UNITED STATES.

MR. SPERTUS: GOOD AFTERNOON, YOUR HONOR.
JAMES SPERTUS FOR DR. SHIH.

THERE'S A WAIVER ON FILE, AND HE'S NOT
PRESENT.

MS. WASSERMAN: GOOD AFTERNOON, YOUR HONOR.
CHRISTA WASSERMAN ALSO ON BEHALF OF DR. SHIH.

MR. HANUSZ: GOOD AFTERNOON, YOUR HONOR. JOHN
HANUSZ FOR DR. SHIH.

1 THE COURT: GOOD AFTERNOON.

2 JUST A MINUTE.

3 FROM WHAT I'VE SEEN OF YOUR FILINGS, ONE
4 ISSUE IS THE EXHIBITS CONCERNING -- THAT WOULD BE
5 ADMISSIBLE -- ADMITTED BASED ON THE TESTIMONY OF
6 MR. MONROY.

7 THE DISPUTE BEING WHETHER EXCERPTS OF THE
8 EXPORT ADMINISTRATION REGULATIONS CAN BE ADMITTED. MY
9 VIEW ON THIS IS THE FOLLOWING:

10 EXCERPTS FROM THE E.A.R. MAY BE ADMITTED,
11 PROVIDED, HOWEVER, FIRST, THAT THEY ARE -- THEY PROVIDE
12 SUFFICIENT CONTEXT. THAT IS TO SAY, THAT THERE'S NOT A
13 REGULATION THAT'S STARTING IN THE MIDDLE OF THE
14 REGULATION AS OPPOSED TO THE BEGINNING OF THAT -- AT
15 LEAST THAT SECTION OF THE REGULATION WHERE, IF THERE'S
16 SOMETHING TO WHICH THERE'S BEEN A REFERENCE, THE
17 COMPLETE LIST IS APPROPRIATE.

18 SECOND, THESE WOULD BE ADMITTED FOR A
19 LIMITED PURPOSE, AND THE JURY WOULD BE SO INSTRUCTED.
20 THAT LIMITED PURPOSE IS, THAT THEY'RE BEING ADMITTED TO
21 FACILITATE THE JURY'S CONSIDERATION AS TO THE NATURE OF
22 THE E.A.R. PROCESS, NOT FOR WHAT THE LAW IS AS STATED
23 IN ANY OF THESE EXHIBITS.

24 THE COURT WILL INSTRUCT YOU ON THE LAW
25 WITH RESPECT TO ANY ISSUES YOU ARE TO ADDRESS,

1 INCLUDING AS TO ANY OF THESE EXHIBITS.

2 THIRD, I WILL REVISIT -- I MAY REVISIT
3 THE ADMISSION BASED UPON A FINAL DETERMINATION OF THE
4 SCOPE OF THE POTENTIAL -- OF THE -- THE CONTENT OF THE
5 JURY INSTRUCTIONS ON THESE -- SOME OF THE EXCEPTIONS.

6 TO BE CLEAR, I UNDERSTAND THE DEFENDANT'S
7 POSITION IS NOT -- MAY NOT NECESSARILY DEPEND ON
8 WHETHER I AGREE THAT A PARTICULAR EXCEPTION MAY APPLY.
9 BUT I'LL REVIEW THIS IN THE CONTEXT -- I'LL REVIEW THIS
10 AGAIN IN THE CONTEXT TO SEE WHETHER I ADHERE TO THE
11 VIEW THAT THESE CAN BE ADMITTED FOR THAT LIMITED
12 PURPOSE.

13 IS THERE ANYTHING YOU WANT TO ADD ON THIS
14 ONE?

15 MR. SHOBAKI: YOUR HONOR, OBVIOUSLY, THE
16 GOVERNMENT DISAGREES WITH THEM BECOMING EXHIBITS FOR
17 THE JURY.

18 HOWEVER, I ALSO DO RECOGNIZE THAT IT'S
19 WITHIN THE COURT'S DISCRETION TO DO SO AND WOULD ASK
20 THAT THE COURT DO REVISIT THE EXHIBITS WHEN IT MAKES A
21 DETERMINATION ON THE JURY INSTRUCTIONS.

22 AND, OBVIOUSLY, THE GOVERNMENT HAS
23 ALREADY TOLD THE DEFENSE IT DOESN'T HAVE A PROBLEM WITH
24 THE DEFENSE SHOWING THEM TO MR. MONROY DURING
25 QUESTIONING.

1 MR. SPERTUS: JUST A MECHANICAL POINT. THE
2 COURT ACKNOWLEDGED THE COMPLETENESS ISSUE. AND JUST SO
3 THE RECORD IS CLEAR, RATHER THAN REPLACE THE EXHIBITS
4 THAT HAVE ALREADY BEEN IDENTIFIED, WE'VE CREATED TWO
5 NEW EXHIBITS THAT ARE THE COMPLETE SECTIONS. WE WILL
6 E-MAIL THEM TO THE GOVERNMENT AND ASSIGN A DIFFERENT
7 EXHIBIT NUMBER.

8 THE COURT: THANK YOU.

9 THE SECOND ISSUE CONCERNS -- WHICH IS
10 RAISED IN DOCKET 457, TO WHICH THERE WAS JUST A
11 RESPONSE IN DOCKET 462, CONCERNS PROFFERED TESTIMONY BY
12 MR. MATTIS. I THINK THIS ISSUE DISTILLS TO THE
13 FOLLOWING:

14 TO WHAT EXTENT CAN THE GOVERNMENT SHOW
15 THAT THE -- THOSE ENTITIES ABOUT WHICH MR. MATTIS MIGHT
16 TESTIFY ARE LINKED TO THE DEFENDANT IN SOME MANNER?

17 FOR EXAMPLE, IN THE GOVERNMENT'S
18 OPPOSITION BRIEF ON THIS ONE, DOCKET 462, A RESPONSE,
19 THE GOVERNMENT REFERS TO A PAYMENT OF ABOUT A MILLION
20 DOLLARS, I BELIEVE, TO AN ACCOUNT THAT THE GOVERNMENT
21 SAYS WAS OF AN ACCOUNT OF DEFENDANT. AND THE
22 GOVERNMENT SAYS THAT -- I BELIEVE IT'S A REFERENCE TO
23 QING'AN INTERNATIONAL TRADING COMPANY, ALSO KNOWN AS
24 "QTC."

25 THEREFORE, THE ISSUE IS, WHETHER THERE'S

1 EVIDENCE THAT LINKS THE DEFENDANT -- THE DEFENDANT'S
2 KNOWLEDGE OF QTC AND THE TRANSFER OF THESE FUNDS TO
3 THIS ACCOUNT.

4 HYPOTHETICALLY, THERE COULD BE MORE THAN
5 ONE PERSON IN CONTROL OF THE ACCOUNT. MORE THAN ONE
6 PERSON COULD HAVE COMMUNICATED WITH QTC OR THE PERSON
7 THAT CAUSED QTC TO MAKE THIS. I DON'T HAVE ALL THAT
8 EVIDENCE YET.

9 MY VIEW IS, TO THE EXTENT THAT MR. MATTIS
10 TESTIFIES ABOUT ENTITIES, THEY MUST BE LINKED TO THE
11 DEFENDANT BECAUSE, OTHERWISE, THERE ARE 403 ISSUES
12 HERE.

13 THE ISSUE IN THE CASE IS, AMONG THEM,
14 WHETHER THE DEFENDANT KNOWINGLY, WILLFULLY EXPORTED OR
15 PARTICIPATED IN THE EXPORT OF CERTAIN ITEMS KNOWN --
16 THAT WERE -- FOR WHICH LICENSES WERE REQUIRED AND THERE
17 WAS NO LICENSE. THAT'S THE ISSUE.

18 I'VE DETERMINED, AND IT WAS IN A RESPONSE
19 TO AN EARLIER MOTION BY THE GOVERNMENT, AND THE
20 DEFENDANT DIDN'T OPPOSE IT, I DON'T THINK, THAT THE
21 DEFENDANT CANNOT USE THESE CRIMINAL PROCEEDINGS TO
22 CHALLENGE A LISTING OF AN ITEM OR AN ENTITY ON THE
23 LISTS. SO THIS IS NOT ABOUT -- THIS EVIDENCE ISN'T,
24 THEREFORE, I DON'T THINK NECESSARY IN TERMS OF THE
25 REASONS WHY AN ENTITY WAS PLACED ON THE LIST OR A

1 PRODUCT WAS PLACED ON THE LIST.

2 THE ISSUE IS, WHETHER THESE ENTITIES ARE
3 SOMEHOW -- THE EVIDENCE SHOWS OR COULD BE INTERPRETED
4 TO SHOW THAT ONE OR MORE OF THESE ENTITIES IS LINKED TO
5 THE DEFENDANT.

6 SO, MR. ROLLINS?

7 MR. ROLLINS: YES, YOUR HONOR.

8 TOTALLY UNDERSTAND AND AGREE WITH THE
9 COURT'S CONCERNS.

10 AND IF IT WOULD BE HELPFUL FOR THE COURT,
11 THE GOVERNMENT CAN ACTUALLY FILE A LIST OF THE TRIAL
12 EXHIBITS IN WHICH THE DEFENDANT -- THERE'S E-MAILS
13 INDICATING THAT THE DEFENDANT IS AWARE OF QTC AND AN
14 INDIVIDUAL WHO IS AFFILIATED WITH QTC.

15 AND SO I THINK THAT MIGHT BE HELPFUL FOR
16 THE COURT IN -- BECAUSE I CERTAINLY UNDERSTAND THE
17 COURT'S 403 CONCERNS.

18 INTRODUCING EVIDENCE OF A FRONT COMPANY
19 STATUS IN A VACUUM, IF IT WERE UNTETHERED TO THE
20 EVIDENCE IN THIS CASE, COULD POSE, INDEED, A
21 SIGNIFICANT 403 CONCERN.

22 I THINK THAT WHEN THE COURT SEES THE
23 EVIDENCE THAT WE'RE TALKING ABOUT, THE COURT WILL AGREE
24 THAT THIS IS HIGHLY PROBATIVE TO IDENTIFY THE ACTUAL
25 FRONT COMPANY IN THIS CASE.

1 THE COURT: WELL, I DON'T KNOW -- OTHER THAN
2 QTC, WHAT OTHER ENTITIES DO YOU PROPOSE TO HAVE
3 MR. MATTIS IDENTIFY?

4 MR. ROLLINS: ONE WOULD BE THE 607 INSTITUTE,
5 YOUR HONOR. AND THAT WAS ALSO MENTIONED IN OUR
6 RESPONSE BRIEF.

7 AND WE CAN ALSO IDENTIFY FOR THE COURT A
8 FEW EXHIBITS -- A FEW TRIAL EXHIBITS IN WHICH THE
9 DEFENDANT ACTUALLY, AGAIN, IS LINKED DIRECTLY TO
10 DOCUMENTS THAT REFERENCE "607."

11 THE COURT: HAVE YOU DISCUSSED THAT -- THOSE
12 EXHIBITS WITH DEFENSE COUNSEL?

13 MR. ROLLINS: WE HAVE NOT GIVEN THEM A LIST OF
14 SPECIFIC EXHIBITS YET, BUT WE'RE CERTAINLY HAPPY TO
15 CONFER ON THAT. AND WE MAY EVEN BE ABLE TO RESOLVE IT.

16 THE COURT: DO THAT.

17 ALSO, KEEP IN MIND, BECAUSE I THINK I'VE
18 ADDRESSED THIS BEFORE IN THE CONTEXT OF OUR VARIOUS
19 DISCUSSIONS ABOUT NATIONAL SECURITY, NATIONAL
20 INTERESTS, CHINESE MILITARY, A FRONT FOR THE CHINESE
21 MILITARY AND SO ON, THOSE, TO ME, CONTINUE TO RAISE 403
22 ISSUES.

23 AND AS PRESENTED IN THE DEFENDANT'S
24 OBJECTION TODAY, THERE'S REFERENCES TO THOSE TYPES OF
25 ENTITIES BEING IDENTIFIED.

1 SO, AGAIN, EVEN ASSUMING THAT -- WELL,
2 THAT CONCERN REMAINS A 403 CONCERN, EVEN ASSUMING THAT
3 THERE WERE AN E-MAIL, HYPOTHETICALLY, THAT LINKS THE
4 DEFENDANT TO A PARTICULAR ENTITY. I DON'T KNOW WHETHER
5 IT'S GOING -- WHETHER, ON THE 403 GROUNDS, THE
6 TESTIMONY THAT THAT ENTITY IS -- DOES WORK WITH THE
7 CHINESE MILITARY IN ORDER TO ADVANCE ITS AGENDA WOULD
8 BE APPROPRIATE.

9 MR. ROLLINS: AND I DO VERY MUCH APPRECIATE
10 THE COURT'S 403 CONCERNS ON THAT FRONT, YOUR HONOR.

11 MY ONLY, SORT OF, WRINKLE OR CHANGE IN
12 THE COURT'S ORIGINAL VIEW ON THIS POINT THAT MIGHT BE
13 WORTH RECONSIDERING ARE THE ARGUMENTS AND THE LINE OF
14 CROSS-EXAMINATION THAT DEFENDANT HAS MADE SINCE THIS
15 CASE BEGAN, AS WELL AS THE NEW INSTRUCTION THAT THE
16 COURT FINALIZED WITH RESPECT TO WILLFULNESS.

17 SO THOSE TWO THINGS -- WHEN THE COURT
18 PREVIOUSLY INDICATED 403 CONCERNS ON THOSE
19 AFFILIATIONS, THOSE TWO THINGS HAVE CHANGED SINCE THE
20 COURT'S ORIGINAL THINKING.

21 AND FROM THE GOVERNMENT'S PERSPECTIVE,
22 THE FACT THAT THE DEFENDANT HAS NOW ARGUED, IN OPEN
23 COURT IN OPENING, THROUGH CROSS-EXAMINATION OF
24 GOVERNMENT WITNESSES, THAT HE WAS ENGAGED PURELY IN
25 SCIENTIFIC AND ACADEMIC RESEARCH, THE IDENTITY OR THE

1 AFFILIATION OF THOSE ENTITIES WITH THE PRC'S MILITARY
2 GROUPS HAS BEEN BECOME PLACED DIRECTLY IN ISSUE BY THE
3 DEFENSE.

4 AND SO, AT A BARE MINIMUM, IT'S NOW
5 NECESSARY, IN THE GOVERNMENT'S VIEW, TO REBUT THOSE
6 ARGUMENTS WITH EVIDENCE OF THE SOURCE OF A
7 MILLION-DOLLAR PAYMENT, FOR EXAMPLE, INTO DEFENDANT'S
8 ACCOUNT.

9 THE COURT: OKAY. WELL, I UNDERSTAND.

10 MR. SPERTUS?

11 MR. SPERTUS: YOUR HONOR, I HAVE THREE
12 DISTINCT POINTS TO MAKE.

13 FIRST OF ALL, WHEN THE COURT SAID THAT
14 THERE SHOULD BE A LINK BETWEEN THESE ENTITIES AND
15 DR. SHIH, I JUST WANT TO CLARIFY WHAT THE GOVERNMENT'S
16 CHALLENGE NOW WILL BE. IT'S EVIDENCE THAT DR. SHIH IS
17 AWARE OF WHAT'S GOING ON BEHIND THE SCENES, AS ARGUED
18 BY THE GOVERNMENT, NOT THAT HE'S AWARE OF THE ENTITIES.

19 FOR EXAMPLE, THE BANK RECORDS ESTABLISH A
20 LINK BETWEEN DR. SHIH AND QTC; BUT THIS EXPERT
21 TESTIMONY IS GOING TO BE TRYING TO SHOW THAT QTC IS BAD
22 FOR REASONS UNKNOWN TO DR. SHIH.

23 AND WHEN THE COURT IDENTIFIED A LINKING
24 REQUIREMENT, I JUST WANT TO CRYSTALLIZE WHAT THE LINK
25 NEEDS TO BE.

1 THE COURT: GO AHEAD.

2 MR. SPERTUS: THE SECOND THING WHICH IS, I
3 THINK, MORE OF A THRESHOLD ISSUE IS THAT, WE LEARNED,
4 FOR THE VERY FIRST TIME, WHAT THE OPINIONS OF MATTIS
5 WOULD BE, AS LISTED ON PAGE 2 OF THE BRIEF WE FILED
6 TODAY, FRIDAY EVENING.

7 AND SO THE GOVERNMENT HAS REPEATEDLY SAID
8 THAT THEIR EXPERT DISCLOSURE ON MATTIS HAPPENED ON
9 MARCH 14TH. WE HAVE ATTACHED THE TWO DISCLOSURES AS
10 EXHIBITS A AND B.

11 IN EXHIBIT A, WE HAD NO IDEA WHAT THE
12 OPINIONS WOULD BE. AND WE FILED THREE BRIEFS
13 ADDRESSING THAT UNCERTAINTY.

14 THEN FRIDAY NIGHT, WE'RE TOLD WHAT THE
15 OPINIONS WILL BE, BUT WITHOUT THE BASIS FOR THOSE
16 OPINIONS. SO WE COULDN'T TEST THEM OVER THE WEEKEND.

17 AND THEN TODAY IN THE BRIEF FOR THE VERY
18 FIRST TIME, THE GOVERNMENT SAYS THAT THIS -- THESE
19 OPINIONS COME FROM OPEN SOURCE MATERIAL THAT IS NOT
20 CLASSIFIED MATERIAL, BECAUSE WE WERE CONCERNED IN OUR
21 BRIEF, WE SAID THERE'S A FOURTH BASIS FOR EXCLUSION
22 THAT MATTIS IS A CIA AGENT. AND WE DIDN'T WANT ANY
23 SECTION 8 OBJECTIONS TO BE MADE TO CROSS.

24 BUT IF IT'S ALL OPEN SOURCE MATERIAL,
25 THAT'S THE BASES FOR THE OPINIONS THAT WE'RE ENTITLED

1 TO RECEIVE AS A RULE 16 DISCLOSURE.

2 SO I SUBMIT IT'S A VERY SINCERE THRESHOLD
3 REQUIREMENT UNDER RULE 16 THAT WE GET THE OPINIONS AND
4 THE BASES FOR THE OPINIONS FAR ENOUGH IN ADVANCE OF
5 TRIAL SO THAT WE CAN TEST IT.

6 WE DIDN'T GET THE OPINIONS UNTIL FRIDAY,
7 AND STILL DON'T HAVE THE BASES. AND I WOULD ASK THAT
8 THE COURT JUST EXCLUDE THE WITNESS ON THAT BASIS.
9 WE'RE IN THE MIDDLE OF TRIAL NOW. IT'S NOT TIMELY.

10 SO THE LINK -- THE RULE 16 VIOLATIONS ARE
11 THE PARAMOUNT ONES.

12 AND THEN SEPARATELY, THE RELEVANCE. TO
13 THIS DAY, SINCERELY, AS I STAND AT THE LECTERN, I HAVE
14 NO IDEA WHAT THE RELEVANCE WOULD BE IF THERE'S AN
15 INVESTOR IN A COMPANY LIKE QTC, FOR EXAMPLE, THAT IS
16 FUNDING RESEARCH FOR DR. SHIH, AND THE GOVERNMENT WANTS
17 TO SAY, THERE'S SOMEONE CONNECTED TO THE MILITARY
18 WORKING AT THAT COMPANY, HOW IS THAT RELEVANT TO WHAT
19 DR. SHIH DID?

20 THE COURT: THANK YOU, MR. SPERTUS.

21 MR. ROLLINS?

22 MR. ROLLINS: JUST A BRIEF RESPONSE, YOUR
23 HONOR.

24 WE CERTAINLY THINK THE DEFENSE IS
25 ENTITLED TO ARGUE THAT THE DEFENDANT NEVER KNEW WHAT

1 THESE COMPANIES DID. THAT'S CERTAINLY WITHIN THE REALM
2 OF THEIR DEFENSE.

3 JUST OFF THE CUFF, SOME OF THE ITEMS THAT
4 I THINK CAN LINK THE DEFENDANT AND PROVE THAT THE
5 DEFENDANT DID KNOW WHAT THESE ENTITIES WERE UP TO,
6 TESTIMONY FROM WITNESSES THAT DENG JIERU WAS AFFILIATED
7 WITH THE CHINESE MILITARY OR HER FATHER WAS AFFILIATED
8 WITH THE CHINESE MILITARY. AND THEN IN CONJUNCTION
9 WITH E-MAILS FROM DENG JIERU TO THE DEFENDANT
10 INDICATING THAT SHE WAS AFFILIATED WITH QTC.

11 AND SO I THINK THAT -- AND, IN FACT, IN
12 HER SIGNATURE BLOCK IN HER E-MAIL.

13 SO THOSE TWO FACTS ALONE WOULD BE ENOUGH
14 FOR THE JURY TO BE ENTITLED TO WEIGH AND EVALUATE THAT
15 EVIDENCE.

16 AND THEN MR. MATTIS' TESTIMONY, OF
17 COURSE, IS ALSO HIGHLY, HIGHLY RELEVANT TO DEFENDANT'S
18 MOTIVE AND STATE OF MIND WHEN HE'S GETTING THESE
19 E-MAILS BACK AND FORTH AND ARGUING THAT HE DIDN'T KNOW
20 HE NEEDED TO DECLARE THE INCOME ON HIS TAXES, FOR
21 EXAMPLE, BECAUSE HE BELIEVED THAT THE MILLION DOLLARS
22 FROM QTC WAS PURELY FOR RESEARCH PURPOSES.

23 THE COURT: WHAT ABOUT THE DISCLOSURE ISSUE
24 CONCERNING THE OPEN SOURCE MATERIALS THAT COULD FORM
25 THE BASIS FOR THESE OPINIONS?

1 MR. ROLLINS: I'M GOING TO LET MY COLLEAGUE,
2 MR. SHOBAKI, ADDRESS THAT, WITH THE COURT'S PERMISSION.

3 MR. SHOBAKI: SURE, YOUR HONOR.

4 WITH RESPECT TO OPEN SOURCE MATERIALS,
5 THAT'S THE ENTIRE WORLD OF KNOWLEDGE. MR. MATTIS IS A
6 RESEARCHER WHO RESEARCHES CHINA. IT'S HIS AREA OF
7 SPECIALIZATION. SO HE COULD READ CHINESE LANGUAGE
8 NEWSPAPERS. HE COULD READ WEBSITES.

9 THE ENTIRE BODY OF WHAT THE EXPERT RELIES
10 ON IN -- ESPECIALLY AN EXPERT LIKE THIS IN FORMULATING
11 THEIR VIEWS ABOUT THE IDENTITIES OF SPECIFIC ENTITIES
12 AND THEIR ROLES IN CHINA, THAT'S -- THAT ALL DOESN'T
13 HAVE TO BE DISCLOSED IN SOME KIND OF GIANT DUMP OF
14 DOCUMENTS.

15 TO THE EXTENT THAT THERE'S A QUESTION
16 ABOUT WHAT BASIS HE HAS FOR BELIEVING X, Y AND Z,
17 THAT'S SOMETHING THAT CAN BE ADDRESSED IN QUESTIONING.

18 THE COURT: IF THE DOCUMENTS ARE OPEN --
19 PUBLICLY-AVAILABLE DOCUMENTS, AND THEY FORM THE BASIS
20 FOR HIS OPINION, WHY ISN'T THEIR DISCLOSURE -- WHY
21 WASN'T THEIR DISCLOSURE REQUIRED PRIOR TO NOW SO THAT
22 THE DEFENDANT'S COUNSEL COULD EXAMINE THOSE DOCUMENTS
23 TO SEE WHETHER THERE WAS A BASIS TO CROSS-EXAMINE, FOR
24 EXAMPLE, AS TO THE OPINION THAT'S PREMISED ON THE
25 DOCUMENTS?

1 MR. SHOBAKI: YOUR HONOR, I DON'T BELIEVE RULE
2 16 REQUIRES THAT EVERY DOCUMENT THAT AN EXPERT
3 CONSIDERS IN FORMING THEIR OPINION NEEDS TO BE
4 PRODUCED, IF THEY'RE PUBLICLY-AVAILABLE DOCUMENTS.

5 THE COURT: WELL, DID HIS OPINION STATE --
6 WHEN YOU DISCLOSED HIM, DID YOU STATE THAT HIS OPINION
7 WOULD BE BASED ON PUBLICLY-AVAILABLE DOCUMENTS?

8 MR. SHOBAKI: EXACTLY WHAT IT SAYS IN OUR
9 INITIAL DISCLOSURE ON MARCH 14TH, AMONGST OTHER THINGS,
10 HIS EXPERIENCE, ET CETERA, PLUS ACADEMIC LITERATURE AND
11 OPEN SOURCE MATERIALS.

12 AGAIN, IN THE APRIL 11, 2019
13 SUPPLEMENTAL, THERE'S A -- THE COURT HAD REQUIRED A
14 FILING AT SOME POINT. WE SPECIFICALLY DISCLOSED THAT
15 HIS -- BASED ON HIS KNOWLEDGE OF THE VARIOUS PRC
16 ENTITIES NAMED IN THE INDICTMENT AND HIS REVIEW OF OPEN
17 SOURCE CHINESE AND ENGLISH LANGUAGE DOCUMENTS.

18 THE COURT: HAVE YOU DISCLOSED, YET, THE OPEN
19 SOURCE DOCUMENTS ON WHICH HIS OPINION IS BASED?

20 MR. SHOBAKI: NO.

21 I DON'T ACTUALLY POSSESS THOSE
22 DOCUMENTS -- OR THE GOVERNMENT DOESN'T POSSESS THOSE
23 DOCUMENTS, YOUR HONOR.

24 THE COURT: WELL, HOW IS HE -- HOW CAN HE
25 EFFECTIVELY BE CROSS-EXAMINED FOR THE OPINIONS THAT ARE

1 BASED ON DOCUMENTS WHEN THE DOCUMENTS AREN'T AVAILABLE?

2 MR. SHOBAKI: WELL, I'LL GIVE YOU AN EXAMPLE,
3 YOUR HONOR. THERE'S -- WELL, FIRST OF ALL, JUST WITH
4 RESPECT TO SOME OF THE CASES WE CITED, THERE ARE MANY
5 INSTANCES WHERE PEOPLE ARE RESEARCHERS, FOR EXAMPLE,
6 YOU SEE IN SOME OF THE TERRORISM CASES WHO HAVE
7 RESEARCHED AL QAEDA THROUGH READING ON THE WEB,
8 EXTENSIVELY FROM READING THEIR PROPAGANDA MATERIALS.
9 THOSE PROPAGANDA MATERIALS AND ALL OF THE THINGS THAT
10 INFORM THE KNOWLEDGE OF AN EXPERT OF THAT SORT ARE NOT
11 SOMETHING THAT'S PRODUCED IN DISCOVERY. IT'S JUST --
12 IT'S WHAT INFORMS THEM AS A PERSON IN TERMS OF BEING A
13 SCHOLAR.

14 SO IT'S A LITTLE BIT DIFFERENT, FOR
15 EXAMPLE, FROM A TEST REPORT THAT A SCIENTIFIC EXPERT IS
16 WORKING ON WHERE YOU HAVE RESULTS AND NUMBERS AND
17 THINGS THAT IT'S BASED ON.

18 SO FROM THAT STANDPOINT, I BELIEVE
19 THERE'S JUST A FUNDAMENTAL DIFFERENCE IN THE MATERIALS
20 RELIED UPON SUCH THAT IT'S NOT A BODY OF MATERIALS THAT
21 EASILY DISTILL TO, YOU KNOW, A SET OF DOCUMENTS.

22 THE COURT: BRIEFLY, MR. SPERTUS.

23 MR. SPERTUS: YOUR HONOR, THE EXPERT THAT
24 COUNSEL WAS JUST REFERRING TO IN SOME TERRORISM CASE
25 WAS SUBJECT TO A SIGNIFICANT DAUBERT HEARING. AND MOST

1 OF HIS EXPERT TESTIMONY WAS EXCLUDED.

2 WE DIDN'T GET THE OPINIONS UNTIL FRIDAY
3 NIGHT. SO WE COULDN'T EVEN MOVE FOR A DAUBERT HEARING
4 ON THIS EXPERT.

5 IT'S THE LATENESS OF THE DISCLOSURES THAT
6 IS CAUSING SO MUCH DIFFICULTY. WE'VE NEVER FOUND A
7 CASE WHERE THE OPINION DISCLOSURE IS DONE IN THE MIDDLE
8 OF TRIAL.

9 THE COURT: MY VIEW ON THIS AT THE MOMENT IS
10 THE FOLLOWING:

11 FIRST, WITH RESPECT TO THE LINKS, I'M NOT
12 PERSUADED -- I THINK THAT IT'S NOT NECESSARY THAT THE
13 EVIDENCE SHOW THAT DR. SHIH -- THE DEFENDANT,
14 DR. SHIH, KNOW EVERYTHING ABOUT THE OTHER ENTITY.
15 THERE JUST HAS TO BE SUFFICIENT EVIDENCE FROM WHICH A
16 FACTFINDER CAN REACH THAT CONCLUSION, THAT HE KNOWS A
17 SUFFICIENT AMOUNT ABOUT THE ENTITIES. SO I DON'T --
18 JUST ANY MENTION OF THE ENTITY WOULDN'T NECESSARILY BE
19 ENOUGH. IT DEPENDS ON WHAT THE STATEMENT IS.

20 WITH RESPECT TO DISCLOSURE OF THE
21 OPINIONS, I'M NOT -- THAT IS NOT OF GREAT CONCERN TO ME
22 INASMUCH AS THE ENTITY -- THE RELATIVELY SMALL NUMBER
23 OF ENTITIES AT ISSUE HERE HAVE BEEN LONG WELL KNOWN TO
24 BOTH SIDES.

25 BUT I AM CONCERNED ABOUT THE ISSUE OF THE

1 BASIS FOR THE OPINION. AND I'M NOT -- MY POINT ISN'T
2 THAT ALL MATERIALS WITH WHICH HE'S FAMILIAR WOULD HAVE
3 TO BE PRODUCED. BUT I DON'T FIND IT VERY COMPELLING
4 THAT NONE WAS PRODUCED, BECAUSE THEN I DON'T -- OTHER
5 THAN ASKING GENERIC QUESTIONS ABOUT, "WHAT DID YOU
6 REVIEW," I DON'T QUITE SEE HOW HE CAN BE CROSS-EXAMINED
7 AS TO WHETHER HIS OPINIONS ARE RELIABLY SUPPORTED BY
8 THE DOCUMENTS HE REVIEWED.

9 SO WHAT I MIGHT HAVE TO DO -- IS THERE
10 ANYTHING NEW ON THIS, MR. SPERTUS -- MR. SHOBAKI?

11 MR. SHOBAKI: NO.

12 THE ONLY THING THAT I WOULD JUST NOTE
13 FROM A SCHEDULING STANDPOINT, THE REASON WE PUT HIM
14 INTO NEXT WEEK, THAT'S THE ONLY TIME HE'S AVAILABLE.
15 I'M SORRY, NEXT WEEK. THE WEEKS ARE BLENDING TOGETHER,
16 YOUR HONOR. TOMORROW, THAT'S WHEN HE'S AVAILABLE. SO
17 WE JUST ASK THAT WHATEVER IT IS THAT THE COURT DECIDES,
18 THAT WE DO IT EXPEDITIOUSLY.

19 THE COURT: WELL --

20 MR. ROLLINS: MAY WE HAVE A MOMENT TO CONFER
21 AMONGST OURSELVES, YOUR HONOR?

22 THE COURT: YES.

23 **(PAUSE IN THE PROCEEDINGS)**

24 MR. SHOBAKI: YOUR HONOR, WE WOULD BE FINE
25 WITH HAVING A FOUNDATIONAL HEARING TO MAKE A

1 DETERMINATION ABOUT WHETHER THERE'S -- WHAT THE BASIS
2 FOR HIS OPINIONS ARE.

3 MR. SPERTUS: MR. HANUSZ WILL ADDRESS THE
4 POINTS.

5 THE COURT: BRIEFLY. I DON'T HAVE ALL
6 AFTERNOON TO DO THIS.

7 MR. HANUSZ: I UNDERSTAND, YOUR HONOR.

8 THIS ISSUE HAS COME UP NUMEROUS TIMES IN
9 TERRORISM CASES. COURTS HAVE REPEATEDLY FOUND THIS
10 SORT OF TESTIMONY, WHICH IS UNTESTABLE, PROBLEMATIC.
11 AND I WOULD DIRECT THE COURT TO THE KAMIR (PHONETIC)
12 CASE. I CAN CITE SOME BRIEFING IN THERE.

13 BUT I GUESS WHAT I'M SAYING IS, THEIR
14 EXPERT CAN READ A NEWSPAPER AND THEN REGURGITATE WHAT
15 THE NEWSPAPER SAYS. IT BECOMES A HEARSAY FUNNEL. AND
16 IT'S COMPLETELY UNTESTED.

17 THE COURT: IF I KNEW WHAT THE -- IF I HAD
18 THE -- IF THE DEFENSE HAD BEEN PROVIDED WITH THE
19 FIVE -- HYPOTHETICALLY, FIVE DOCUMENTS -- THE FIVE
20 NEWSPAPER ARTICLES, HYPOTHETICALLY, ON WHICH AN OPINION
21 IS BASED, I WOULD FIND THAT LESS PROBLEMATIC. IT'S NOT
22 ABOUT HEARSAY. IT'S ABOUT BEING ABLE TO CROSS-EXAMINE
23 THE WITNESS ON HIS OPINION BASED ON WHAT'S BEEN
24 PRODUCED.

25 NOW, AS I'VE ALREADY STATED, THE CONCERN

1 THAT I HAVE IS THAT NOTHING HAS BEEN PRODUCED THAT
2 WOULD -- IS THE BASIS FOR HIS OPINION THAT WOULD PERMIT
3 A CROSS-EXAMINATION.

4	CORRECT?
---	----------

5 MR. SHOBAKI: YOUR HONOR, OTHER THAN AN
6 18-PAGE C.V. WITH AN EXTENSIVE LIST OF PUBLICATIONS ON
7 CHINA AND CHINA'S MILITARY, THE VARIOUS EFFORTS OF
8 CHINA TO ACQUIRE TECHNOLOGY, ET CETERA.

9 THE COURT: WELL --

10 MR. HANUSZ: YOUR HONOR, WE'VE BEEN ASKING FOR
11 THOSE MATERIALS SINCE MARCH. THE GOVERNMENT HAS
12 REPEATEDLY COME BACK WITH, OUR DISCLOSURES ARE
13 SUFFICIENT. AND HERE WE ARE IN THE MIDDLE OF TRIAL.

14 THE COURT: WHEN WILL HE BE CALLED TOMORROW?

15 MR. SHOBAKI: WHENEVER MR. MONROY IS DONE, WAS
16 THE PLAN.

17 THE COURT: WELL, THE CROSS OF MR. MONROY IS
18 FINISHED?

19 MR. SPERTUS: BASICALLY, YES, WITH THE
20 ADMISSION OF A LIST OF EXHIBITS, IT'S DONE.

21 MR. SHOBAKI: YEAH, YOUR HONOR, WE CAN BE
22 FLEXIBLE IN TERMS OF SCHEDULING. BUT WE DON'T -- IF
23 HE'S GOING TO TESTIFY, IT WOULD NEED TO BE TOMORROW AT
24 SOME POINT.

25 UNLESS THE TRIAL GOES VERY, VERY LONG,

1 WHICH HOPEFULLY IT DOESN'T.

2 THE COURT: HE'S AVAILABLE ALL DAY TOMORROW;
3 IS THAT RIGHT?

4 MR. SHOBAKI: YES, YOUR HONOR.

5 THE COURT: OKAY. WELL, I'LL SEE -- I HAVE TO
6 SEE HOW THIS PLAYS OUT WITH WHAT ELSE WE'RE DOING.

7 I MAY HAVE A BRIEF HEARING OUTSIDE THE
8 PRESENCE OF THE JURY WHERE HE COULD -- WHERE I COULD --
9 I GET A MORE COMPLETE UNDERSTANDING OF THE BASIS UPON
10 WHICH HE HAS HIS -- ON WHICH -- THE BASIS FOR HIS
11 OPINIONS. AND THEN I CAN BETTER EVALUATE WHETHER THE
12 ABSENCE OF THE PRODUCTION OF THE BASIS -- THE ACTUAL
13 DOCUMENTS ON WHICH HE'S RELYING TO THE DEFENDANT IS
14 SUFFICIENT -- IS A SUFFICIENT BASIS TO EXCLUDE HIS
15 OPINIONS.

16 SO I'LL DO WHAT I CAN TO GET THAT FIT
17 IN WITHOUT -- I DON'T WANT THE JURY TO BE KEPT WAITING
18 LONG, SO IT'LL BE A SHORT PROCESS. SO I'LL DEFER ON
19 THAT, BUT IF THERE'S -- IF THERE'S SUFFICIENT TIME,
20 THEN I WILL DO THAT, SUBJECT, AGAIN, TO THE -- ASSUMING
21 THAT I DON'T -- ASSUMING THAT THERE'S SUFFICIENT
22 DISCLOSURE OR THAT WHAT HAS BEEN DISCLOSED ISN'T --
23 DOESN'T UNDULY PREJUDICE THE DEFENDANT'S ABILITY TO
24 CROSS-EXAMINE, THEN I WOULD STILL REQUIRE THOSE
25 LINKS -- THE EVIDENTIARY LINKS.

1 I THINK THE NEXT ISSUES ARE ABOUT
2 EXHIBITS; IS THAT RIGHT?

3 MR. HANUSZ: YES, YOUR HONOR.

4 THE COURT: AND THE DEFENSE HAS OBJECTIONS TO
5 VARIOUS EXHIBITS FOR CERTAIN WITNESSES.

6 AND THE GOVERNMENT HAS EXHIBIT DISPUTES
7 AS WELL?

8 MR. HANUSZ: YES, YOUR HONOR.

9 IF I CAN ORIENT THE COURT. WE DID -- THE
10 DEFENSE DID ITS BEST TO TRY TO DETERMINE WHICH EXHIBITS
11 CORRESPOND TO WHICH GOVERNMENT'S WITNESSES. THE
12 GOVERNMENT HAS NOT GIVEN US ANY INFORMATION REGARDING
13 THAT. SO WE FOCUSED OUR FILING ON THE EXHIBITS -- OR
14 THE WITNESSES THAT THE GOVERNMENT IDENTIFIED WOULD
15 TESTIFY TOMORROW. WE THEN DID OUR BEST TO FIGURE OUT
16 WHICH DOCUMENTS WENT -- WHICH EXHIBITS WENT WITH THOSE
17 WITNESSES.

18 WE HAVE -- WE HAD A SIGNIFICANT AMOUNT OF
19 OBJECTIONS INITIALLY. WE HAVE WITHDRAWN MOST OF THEM.

20 SO WHAT THE COURT SAW IN DOCUMENT 458 IS
21 A PARED DOWN -- A LOT OF OBJECTIONS HAD BEEN -- WE HAVE
22 REMOVED A LOT OF OBJECTIONS AND WERE LIMITED TO THESE
23 DOCUMENTS, ASSUMING THAT THEY'RE ACTUALLY THE ONES THAT
24 CORRESPOND WITH THE WITNESSES.

25 NOW, CERTAINLY, WITH MR. MATTIS, THE

1 GOVERNMENT HAS NOT PROVIDED ANY DISCLOSURE. SO WE HAVE
2 NOT BEEN ABLE TO PROVIDE ANY EXHIBITS THAT WOULD
3 CORRESPOND WITH MR. MATTIS.

4 THE COURT: OKAY.

5 MR. SHOBAKI: I JUST REPRESENT TO THE COURT
6 THAT THERE ARE NO EXHIBITS THAT WOULD BE USED WITH
7 MR. MATTIS.

8 THE COURT: ALL RIGHT. ARE THE EXHIBITS --
9 WELL, THEN THERE ARE FOUR WITNESSES HERE, MS. ROBINSON,
10 MR. WESTBY, MR. PASCO (PHONETIC) AND MS. MILLER?

11 MR. HANUSZ: YES, YOUR HONOR.

12 THE COURT: DOES THE GOVERNMENT PLAN TO CALL
13 ANY OF THOSE FOUR TOMORROW?

14 MS. SARTORIS: YES, ALL FOUR DEPENDING ON
15 TIME.

16 I WOULD LIKE TO JUST ADD THAT, THE
17 GOVERNMENT DID EXACTLY IDENTIFY TO DEFENSE WHICH
18 EXHIBITS SPECIAL AGENT MILLER WOULD BE TESTIFYING TO.
19 AND WE'VE MET AND CONFERRED ON THEM. SO IT'S NOT A
20 VACUUM.

21 WITH RESPECT TO MS. ROBINSON, THE
22 GOVERNMENT PROVIDED EXPERT DISCLOSURES WHICH IDENTIFY,
23 BY BATES NUMBERS, EXACTLY WHICH DOCUMENTS SHE WOULD BE
24 TALKING ABOUT. AND SO THOSE WERE CORRECTLY IDENTIFIED
25 BY DEFENSE COUNSEL.

1 AND THEN WITH RESPECT TO MR. PASCO, HE
2 WAS THE CUSTODIAN OF RECORD ON CERTAIN HONEYWELL
3 DOCUMENTS. AND THAT WAS -- A LETTER WAS SENT TO
4 DEFENSE COUNSEL ABOUT THAT LAST WEEK AS WELL.

5 SO I DON'T THINK IT'S REALLY THE DEFENSE
6 COUNSEL HAD TO DO THIS IN A VACUUM.

7 THE COURT: THAT'S FINE.

8 SO DID THE PARTIES AGREE THAT THE
9 EXHIBITS IDENTIFIED IN THE DEFENDANT'S FILING, DOCKET
10 461, ARE STILL THE ONES AT ISSUE?

11 MR. HANUSZ: I BELIEVE IT'S 458, YOUR HONOR.

12 THE COURT: EXCUSE ME. THANK YOU.

13 MR. HANUSZ: THE GOVERNMENT IDENTIFIED --

14 THE COURT: YOU'RE RIGHT. JUST A MINUTE.

15 DO YOU AGREE WITH THAT, THESE ARE THE
16 ONES AT ISSUE?

17 MS. SARTORIS: YES, YOUR HONOR. THE ONES ON
18 458.

19 THE COURT: THANK YOU.

20 MS. SARTORIS: THE GOVERNMENT ALSO FILED A
21 SUPPLEMENT WHICH IDENTIFIED ADDITIONAL EXHIBITS.

22 THE COURT: DOCKET 461?

23 MS. SARTORIS: YES, YOUR HONOR.

24 THE COURT: OKAY. JUST A MINUTE.

25 WITH RESPECT TO EXHIBIT 1653, 1654 AND

1 1655, THESE ALL APPEAR TO BE OFFICIAL UNITED STATES
2 RECORDS ABOUT EITHER VISA APPLICATIONS OR OTHER SIMILAR
3 INFORMATION AS TO SEVERAL PERSONS.

4 DO YOU AGREE WITH THAT, MR. HANUSZ?

5 MR. HANUSZ: AGREE.

6 I WOULD ALSO INCLUDE 1202 AND 1203 IN
7 THAT -- RIGHT, IT'S BASICALLY THE SAME OBJECTION.
8 THERE ARE NO FOUNDATIONAL QUESTIONS TO ANY OF THESE
9 EXHIBITS.

10 THE COURT: WHAT'S THE RELEVANCE? WHAT IS THE
11 GOVERNMENT'S POSITION AS TO THE RELEVANCE OF THESE
12 DOCUMENTS?

13 MS. HEINZ: YOUR HONOR, THIS INVOLVES THE
14 FRONT PART OF THE CONSPIRACY WHERE THE DEFENDANT IS
15 PROVIDING TRIQUINT PARTS TO THE -- TO HIS
16 CO-CONSPIRATORS IN CHINA. AND HE DID IT TWO DIFFERENT
17 WAYS.

18 AT THE BEGINNING OF THE CONSPIRACY, HE
19 PROVIDED THEM BY SHIPPING THEM TO A COMPANY IN
20 SINGAPORE.

21 AND A COUPLE YEARS LATER, HE DID IT BY
22 HANDING THEM OFF TO AIR CHINA PILOTS AT A HOTEL IN
23 LOS ANGELES. AND FROM THERE, THE AIR CHINA PILOTS FLEW
24 TO BEIJING. AND THEY ENDED UP IN THE HANDS OF HIS
25 CHINA-BASED CO-CONSPIRATORS. AND THIS IS EVIDENCED IN

1 E-MAILS.

2 SO THERE'S SORT OF TWO DIFFERENT BUCKETS
3 OF DEFENSE OBJECTIONS HERE.

4 ONE BUCKET IS THE SIMPLE OBJECTION THAT
5 THESE MATERIALS WERE PRODUCED AFTER THE TWO-WEEK CUTOFF
6 DATE IN THE COURT'S STANDING ORDER.

7 AND, OF COURSE, THE GOVERNMENT'S POINT OF
8 VIEW IS THAT THEY WERE PRODUCED NO LATER THAN MAY THE
9 1ST. SO THAT WAS TWO WEEKS BEFORE TRIAL. AND SO,
10 THEREFORE, THAT CUTOFF DATE WAS MET.

11 THE SECOND OBJECTION FROM THE DEFENSE IS
12 ONE OF RELEVANCE, BUT ALSO ONE OF 404(B) NOTICE. AND,
13 OF COURSE, IT'S THE GOVERNMENT'S POINT OF VIEW THAT
14 THESE ACTS ARE INEXTRICABLY INTERTWINED WITH THE
15 CONSPIRACY. IN FACT, THEY ARE ABSOLUTELY PART OF THE
16 CONSPIRACY. IT WAS A CONSPIRACY THAT BEGAN WITH TWO
17 CO-CONSPIRATORS, THE DEFENDANT AND YAPING CHEN. AND
18 THOSE TWO CO-CONSPIRATORS CONTINUED TO CONSPIRE FOR
19 OVER 10 YEARS. AND THE GOAL WAS TO GET THESE PARTS
20 INTO CHINA.

21 AND SO IT'S THE GOVERNMENT'S POINT OF
22 VIEW THAT NO 404(B) NOTICE WAS REQUIRED HERE BECAUSE
23 IT'S INEXTRICABLY INTERTWINED WITH THE CONSPIRACY AND
24 THE CONSPIRATORIAL CONDUCT.

25 THESE THREE EXHIBITS RIGHT HERE, 1653,

1 1654 AND 1655 ESTABLISH THAT THE THREE PEOPLE WHOSE
2 NAMES ARE ACTUALLY NAMED IN THE E-MAILS BETWEEN
3 DEFENDANT AND HIS CO-CONSPIRATOR, MICHAEL YE, THOSE
4 NAMES APPEAR IN THESE E-MAILS. AND THESE EXHIBITS
5 ESTABLISH, OR HELP TO ESTABLISH, THAT THOSE PARTICULAR
6 INDIVIDUALS WERE AIR CHINA PILOTS. AND THE TEXT
7 RECORDS, THE TRAVEL RECORDS ESTABLISH THAT THOSE
8 INDIVIDUALS, WHO ARE NAMED IN THE E-MAIL WHO ARE AIR
9 CHINA PILOTS, WERE ACTUALLY IN LOS ANGELES AT THAT TIME
10 AND THEN FLEW TO BEIJING.

11 SO THIS EVIDENCE IS HIGHLY RELEVANT, YOUR
12 HONOR, BECAUSE IT ESTABLISHES WHO THE INDIVIDUALS WERE
13 THAT ARE NAMED IN THE E-MAILS AND WHAT THEY DID AND
14 WHERE THEY WENT.

15 AND THE E-MAILS ARE SUCH THAT THE
16 CHINA-BASED CO-CONSPIRATORS ACTUALLY SAY, "THANK YOU
17 FOR WHAT YOU HAVE DONE." AND IN SOME OF THEM, STATE,
18 YOU KNOW, "YOU ALREADY MET THIS PERSON" AND THE NAMED
19 PERSON BEFORE, "WHEN YOU WERE TRYING TO GET" -- "WHEN
20 YOU GAVE US THAT PART." SO THE E-MAILS REALLY DO TIE
21 THIS TOGETHER AND ESTABLISH THAT THIS IS GOING ON.

22 THE COURT: THANK YOU.

23 MR. HANUSZ?

24 MR. HANUSZ: TWO ISSUES. I'LL DEAL WITH THE
25 DISCLOSURE ISSUE INITIALLY.

1 AT THE TIME THESE DOCUMENTS WERE
2 DISCLOSED, WE HAD A MAY 7TH TRIAL DATE WITH AN APRIL
3 23RD DISCLOSURE DATE. THESE WERE ALL DISCLOSED -- MANY
4 OF THESE WERE DISCLOSED AFTER APRIL 23RD.

5 THE GOVERNMENT IS TAKING THE POSITION
6 THAT THE TRIAL DATE MOVED. BUT AT THAT TIME, UNTIL MAY
7 1ST, WE HAD A MAY 7TH TRIAL DATE.

8 SEPARATELY, AND I THINK THE BIGGER ISSUE,
9 YOUR HONOR, IS THE 404(B) ISSUE. NONE OF THESE ACTS
10 THAT THE GOVERNMENT SPEAKS OF ARE CHARGED. THEY'RE NOT
11 OVERT ACTS.

12 IF THEY ARE OVERT ACTS, I WOULD WELCOME
13 THE GOVERNMENT POINTING THAT OUT TO US.

14 BUT THERE'S -- IT'S SIMPLY -- THE
15 GOVERNMENT CAN'T RELY ON THIS INEXTRICABLY INTERTWINED
16 ARGUMENT. NONE OF THESE PILOTS ARE TESTIFYING, TO OUR
17 KNOWLEDGE.

18 THERE'S ACTUALLY KIND OF A SEPARATE
19 CORPUS DELICTI ISSUE WHERE THE ONLY EVIDENCE THAT THE
20 GOVERNMENT CAN PROFFER OF THIS -- OF WHATEVER THE
21 GOVERNMENT BELIEVES HAPPENED, AND THE DEFENSE DISPUTES
22 THE GOVERNMENT'S CHARACTERIZATION, BUT IS E-MAILS.
23 NONE OF THESE INDIVIDUALS WILL TESTIFY. NONE OF THE
24 INDIVIDUALS ON THE OTHER END OF THE E-MAILS WILL
25 TESTIFY. SO THERE'S A SEPARATE CORPUS DELICTI ISSUE.

1 BUT, REGARDLESS, IT'S JUST CLEAR 404(B)
2 EVIDENCE.

3 THE COURT: I UNDERSTAND.

4 MY VIEW IS THIS: I'M NOT PERSUADED BY
5 THE TIMING ARGUMENT FOR TWO REASONS: ONE, THE DATE WAS
6 EXTENDED.

7 AND, SECOND, IT WAS THE DEFENDANT WHO
8 VIGOROUSLY ADVOCATED FOR A SOONER TRIAL DATE, NOT A
9 LATER ONE WHICH THE GOVERNMENT WANTED. SO I DON'T --
10 I'M NOT PERSUADED THAT THE TIMING IS MATERIAL.

11 WITH RESPECT TO THE 404(B) ISSUE, I DON'T
12 THINK THE -- THAT THERE'S PRESENTLY A SHOWING THAT THIS
13 IS NOT -- THAT THERE ISN'T A BASIS TO CONTEND THAT THIS
14 IS INEXTRICABLY INTERTWINED.

15 TO THE EXTENT THAT YOU'RE RIGHT, THAT
16 NONE OF THESE PERSONS WILL TESTIFY, THEN I WILL HAVE
17 TO -- I'LL REFLECT ON IT, BUT I DON'T -- I'M NOT
18 PERSUADED THAT THESE DOCUMENTS COULD NOT BE INTRODUCED
19 FOR THE -- ON THE BASES STATED.

20 IF, UPON HEARING ALL THE EVIDENCE IN THE
21 TRIAL, I REACH A DIFFERENT VIEW, THEN I WOULD WITHDRAW
22 THEM -- HAVE THEM WITHDRAWN IN THE SAME MANNER THAT I
23 SPOKE EARLIER ABOUT THE REGULATIONS.

24 BUT I THINK, AT THIS POINT, I'M GOING TO
25 OVERRULE THESE OBJECTIONS.

1 MR. HANUSZ: THE CONCERN ON THE DEFENSE SIDE
2 IS, IT'LL BE VERY DIFFICULT, IF NOT IMPOSSIBLE, TO
3 UNRING THE BELL.

4 THE COURT: I UNDERSTAND.

5 WHAT'S THE -- TURNING THEN TO -- THE NEXT
6 CATEGORY IS 1202, 1203?

7 MR. ROLLINS: THAT MAY HAVE BEEN THE SAME
8 CATEGORY OF EVIDENCE WE WERE JUST DISCUSSING, YOUR
9 HONOR.

10 MR. SPERTUS: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: OKAY. AND THEN 1670 THROUGH 1676?

12 BY THE WAY, THIS IS THE FIRST TIME THAT
13 I'VE LOOKED AT THESE DISPUTED EXHIBITS. SOME ARE
14 SEVERAL PAGES. SOME HAVE A LOT OF TEXT.

15 THE QUESTION ON A VISA APPLICATION, WHICH
16 IS A LOT OF TEXT WITH A QUESTION, I DIDN'T THINK THAT
17 WAS JUST THE TEXT OF AN ANSWER. BUT TO THE EXTENT THAT
18 THERE ARE UNIQUE -- THERE'S UNIQUE TEXT IN SOME OF
19 THESE DOCUMENTS, I HAVE TO -- THAT WHERE YOU CONTEND
20 THAT SOME OF THE TEXT SHOULD BE REDACTED, LET ME KNOW.

21 MR. HANUSZ: WILL DO.

22 THE COURT: AGAIN, WE AGREE TO DISAGREE
23 SOMETIMES. IT HAPPENS.

24 MR. HANUSZ: UNDERSTOOD, YOUR HONOR. I
25 APPRECIATE THAT.

1 THE COURT: 1670 TO 1676, IS THAT THE NEXT
2 GROUP?

3 MR. HANUSZ: YES, YOUR HONOR.

4 THE COURT: JUST A MINUTE.

5 WHAT ARE THESE -- ARE YOU GOING TO
6 ADDRESS THESE DOCUMENTS, MS. SARTORIS?

7 MS. SARTORIS: YES, YOUR HONOR.

8 YOUR HONOR, THE DEFENDANT, YOU MAY RECALL
9 FROM THE PRESENTATION THUS FAR, SPENT A PERIOD OF TIME
10 RELEVANT TO THE CONSPIRACY WHERE HE WAS WORKING FOR
11 HONEYWELL. HE SOLD HIS COMPANY, MMCOMM, WAS BOUGHT OUT
12 BY HONEYWELL. AND HE BECAME A HONEYWELL EMPLOYEE FROM
13 2007, I BELIEVE, UNTIL 2011. HE RESIGNED FROM
14 HONEYWELL. AND THEN DAYS LATER, BECAME PRESIDENT OF
15 CHENGDU GASTONE.

16 AND THESE RECORDS REPRESENT THE
17 TRAINING -- SO IF YOU LOOK AT EXHIBIT 1676, THAT RECORD
18 IS A RECORD OF THE TRAINING HE RECEIVED WHILE AT
19 HONEYWELL.

20 THE COURT: WHAT'S THE SOURCE OF THE DOCUMENT?

21 MS. SARTORIS: IT'S FROM THE HONEYWELL'S
22 SYSTEM.

23 SO THE DEFENSE IS NOT OBJECTING ON
24 FOUNDATION. BUT THE SOURCE OF THIS IS FROM THE
25 HONEYWELL DATABASE. SO ALL THESE DOCUMENTS CAME FROM

1 HONEYWELL. ALL OF THESE DOCUMENTS THAT ARE IN THIS
2 GROUP THAT THE COURT IDENTIFIED, THEY'RE HONEYWELL
3 DOCUMENTS THAT CAME FROM HONEYWELL. AND THEY REFLECT
4 TRAINING THAT THE DEFENDANT DID HAVE.

5 AND WITH RESPECT TO FOCUSING JUST ON
6 TRAINING REGARDING EXPORT COMPLIANCE ISSUES, THAT'S THE
7 REMAINING OF EXHIBITS IN THIS SET. THEY REFLECT
8 HONEYWELL'S RECORDS REGARDING THE TRAINING THAT
9 DEFENDANT HAD WHILE AT HONEYWELL ON EXPORT COMPLIANCE
10 ISSUES.

11 THE COURT: IS THERE GOING TO BE A WITNESS WHO
12 WILL TESTIFY AS TO WHAT THE EXPORT COMPLIANCE TRAINING
13 WAS?

14 MS. SARTORIS: YES, YOUR HONOR. THAT'S
15 MR. PASCO. HE IS THE -- WAS THE CUSTODIAN OF RECORD
16 FOR THESE DOCUMENTS AND IS KNOWLEDGEABLE ABOUT HOW
17 HONEYWELL TRACKS THE TRAINING REQUIREMENTS AND HOW
18 THESE DOCUMENTS WERE GATHERED AND THE LIST PUT
19 TOGETHER. SO HE WILL NOT BE TALKING ABOUT THE SUBJECT
20 OF THE RECORDS, BUT JUST TALKING ABOUT THE FACT THAT
21 THESE ARE THE RECORDS THAT HONEYWELL HAS AS TO
22 DEFENDANT'S TRAINING ON EXPORT ISSUES.

23 THE COURT: WELL, JUST SO -- IF WE TURN TO
24 EXHIBIT 1676, THE FIRST PAGE OF IT, BATES NUMBER 22765,
25 AND ALSO HON -- A SEPARATE BATES NUMBER, HON, ENDING IN

1 1217. ABOUT TWO-THIRDS OF THE WAY DOWN THAT PAGE,
2 THERE'S AN ENTRY WHICH HAS FIRST NAME AND LAST NAME OF
3 THE DEFENDANT. AND THEN IT SAYS, "EXPORT COMPLIANCE
4 AWARENESS."

5 DO YOU SEE THAT?

6 MS. SARTORIS: YES, YOUR HONOR.

7 THE COURT: SO YOU WOULD BE SEEKING TO
8 INTRODUCE THIS DOCUMENT AS EVIDENCE THAT THE DEFENDANT
9 HAD TRAINING ON THAT TOPIC?

10 MS. SARTORIS: YES, YOUR HONOR.

11 THE COURT: DO WE KNOW WHEN?

12 MS. SARTORIS: THE WAY THAT THE INFORMATION
13 WAS PROVIDED BY HONEYWELL, YOU CAN SEE FROM THE HON
14 BATES NUMBERS THAT HONEYWELL BATES STAMPED THIS BEFORE
15 GIVING IT TO THE GOVERNMENT. SO WHAT ONE WOULD HAVE TO
16 DO IS, TAKE THE -- AND MR. PASCO WILL EXPLAIN THIS.

17 BUT WE'LL HAVE TO TAKE THE BEGINNING AND
18 JUST LINE IT UP AS IF IT'S AN EXCEL SPREADSHEET.

19 SO IF YOU GO TO THE PAGE THAT STARTS
20 "HON," THEN IT SAYS, "1221," THAT IS THE REST OF THE
21 EXCEL SPREADSHEET. I'M ASSUMING IT'S EXCEL. BUT THE
22 REST OF THE SPREADSHEET.

23 SO THE FIRST LINE, "YI-CHI SHIH HONEYWELL
24 CODE OF BUSINESS CONDUCT" WOULD RELATE TO THE FIRST
25 LINE "5/10/2007."

1 THE COURT: SO THERE'S A CORRELATION SOME TIME
2 IN 2007 OR 2008?

3 MS. SARTORIS: YES.

4 SO YOU CAN LINE IT UP AND DETERMINE, FROM
5 THIS DOCUMENT, WHEN THE TRAINING -- DIFFERENT TRAININGS
6 TOOK PLACE.

7 THE COURT: WHAT EVIDENCE WILL THE GOVERNMENT
8 OFFER AS TO WHAT THE TRAINING WAS?

9 MS. SARTORIS: FOR SOME OF THE TRAINING, WE
10 HAVE THE ACTUAL POWER POINT SLIDES THAT WERE PROVIDED
11 AT THE TIME. AND THESE ARE HONEYWELL'S BUSINESS
12 RECORDS. SOME OF THEM WERE COMPUTERIZED TRAINING.

13 THE COURT: IS THERE A POWER POINT FOR
14 TRAINING ON EXPORT COMPLIANCE AWARENESS?

15 MS. SARTORIS: YES, YOUR HONOR. IT IS EXHIBIT
16 1670.

17 THE COURT: OKAY. JUST A MINUTE.

18 WHAT'S 1671?

19 1670 YOU SAID IS A POWER POINT ON EXPORT
20 COMPLIANCE TRAINING.

21 IS IT DATED?

22 MS. SARTORIS: I DON'T SEE A DATE ON THIS
23 PARTICULAR POWER POINT SLIDE.

24 THE COURT: HOW WILL -- HOW DOES THE
25 GOVERNMENT CONTEND THAT THIS POWER POINT 1670 WAS SHOWN

1 TO THE DEFENDANT AT THE TIME THE DEFENDANT WAS TRAINED?

2 MS. SARTORIS: WHAT MR. PASCO WILL EXPLAIN IS
3 THAT -- AND HE'S ACTUALLY FLYING -- FLEW IN TODAY. AND
4 I WILL BE MEETING WITH HIM AFTER THIS COURT APPEARANCE.

5 BUT HE WILL EXPLAIN THAT -- HOW SOME
6 OF -- SO THE WAY THAT HONEYWELL -- IT'S MY
7 UNDERSTANDING THAT THE WAY HONEYWELL POPULATES THIS
8 LIST IS A COMBINATION OF, PEOPLE HAVE -- SOMETIMES HAVE
9 AN ONLINE COMPUTER-BASED TRAINING THAT WOULD THEN BE
10 LOGGED BY THE HONEYWELL COMPUTER DATABASE.

11 THERE ARE CERTAIN TRAININGS THAT ARE
12 TRAININGS THAT PEOPLE GO TO IN PERSON. AND THOSE WOULD
13 BE PRESENTATIONS WHERE THEY WOULD SIGN IN. AND THEN
14 THE HONEYWELL PERSONNEL THAT WAS RESPONSIBLE FOR
15 PUTTING ON THE TRAINING WOULD THEN SUBMIT THE LIST OF
16 THE PEOPLE WHO ATTENDED THE TRAINING TO THE HONEYWELL
17 SYSTEM.

18 SO THIS IS THE RESULT OF THAT, IS THAT
19 HONEYWELL LOGS THE TRAINING THAT PEOPLE HAVE THROUGH --
20 SOMETIMES IT'S IN-PERSON TRAINING AND SOMETIMES IT'S
21 COMPUTER-BASED TRAINING.

22 THE COURT: BUT THE LIST -- THE SCHEDULE WE
23 WERE LOOKING AT EARLIER, 1676, DOESN'T -- DOES THAT
24 IDENTIFY THE TYPE OF TRAINING?

25 MS. SARTORIS: NOT ENTIRELY. THE SYSTEM

1 DOESN'T CLARIFY IT THAT WAY.

2 BUT WHAT MR. PASCO -- WHAT I EXPECT HE
3 WILL EXPLAIN IS, THAT THERE ARE TIMES WHERE YOU CAN SEE
4 THAT -- THAT THE TIME STAMP ON THE TRAINING IS SORT OF
5 A GENERIC TIME, LIKE 12:00 A.M. AND THAT WHAT WOULD
6 HAPPEN IS, THE PERSON -- SO IMAGINE THAT YOU HAVE A
7 LIVE TRAINING AND PEOPLE SIGN IN. AND THEN YOU HAVE
8 THE PRESENTER SUBMIT IT TO THE HUMAN RESOURCES
9 DEPARTMENT IN CHARGE OF TRAINING. AND THEN AT SOME
10 POINT, THE EMPLOYEE LOGS ALL THE PEOPLE WHO WERE AT THE
11 TRAINING. SO THE TIME STAMPS, WHEN THEY'RE UNIFORM
12 LIKE THAT, WHEN THEY SHOW AT A STRANGE TIME PROBABLY
13 REPRESENTS A LIVE TRAINING AS OPPOSED TO A
14 COMPUTER-BASED TRAINING.

15 THE COURT: YOU'RE SAYING MR. PASCO HAS
16 PERCIPIENT KNOWLEDGE OF THAT?

17 MS. SARTORIS: ABOUT HOW THE TRAINING --

18 THE COURT: HOW THIS DOCUMENT IS CREATED AND
19 HOW THE -- WHY IT REFLECTS WHAT YOU JUST STATED?

20 MS. SARTORIS: YES, YOUR HONOR.

21 HE ISN'T A PERCIPIENT WITNESS TO
22 DEFENDANT'S TRAINING PERSONALLY, BUT HE IS
23 KNOWLEDGEABLE ABOUT THE SYSTEMS AND HOW THE --

24 THE COURT: WHAT EVIDENCE WOULD BE OFFERED
25 THAT EXHIBIT 1670 WAS EITHER SHOWN TO THE DEFENDANT

1 WHEN HE ATTENDED A LIVE TRAINING OR WAS PART OF THE
2 ONLINE TRAINING THAT THE DEFENDANT -- IN WHICH THE
3 DEFENDANT PARTICIPATED?

4 MS. SARTORIS: IS YOUR HONOR ASKING, WAS THIS
5 AN EXAMPLE OF AN ONLINE TRAINING OR A LIVE TRAINING?

6 THE COURT: NO.

7 WHAT I'M ASKING IS, WHAT IS THE EVIDENCE
8 THAT WOULD SHOW -- THAT YOU CONTEND WOULD SHOW THAT THE
9 DEFENDANT WAS SHOWN EXHIBIT 1670 EITHER IN
10 IN-PERSON-LIVE TRAINING OR IN ONLINE TRAINING?

11 MS. SARTORIS: SO IT'S MY UNDERSTANDING THAT
12 HONEYWELL, THROUGH THEIR BUSINESS RECORDS, THEY
13 MAINTAIN THE TRAINING THAT CORRELATES TO THE PROGRAMS.
14 AND SO THESE EXHIBITS CORRELATE TO PARTICULAR TRAINING
15 THAT DEFENDANT IS LOGGED TO HAVE PARTICIPATED IN.

16 THE COURT: AND YOU'RE SAYING THAT'S ALSO TRUE
17 OF 1671?

18 MS. SARTORIS: YES, YOUR HONOR.

19 IT'S TRUE WITH RESPECT TO ALL OF THEM, IS
20 MY UNDERSTANDING. ALL OF THESE ARE TRAININGS THAT THE
21 DEFENDANT WAS EXPOSED TO, AS WILL BE REFLECTED IN THE
22 LOG.

23 THE COURT: I DIDN'T GET DOWN TO THE LEVEL
24 OF -- DO YOU CONTEND THAT THERE'S A SLIDE OR SLIDES IN
25 EACH OF THE EXHIBITS THAT CONSTITUTE -- THAT ARE POWER

1 POINTS FOR TRAINING THAT CORRESPOND TO THE ISSUES HERE
2 IN TERMS OF KNOWLEDGE AND WILLFULNESS?

3 MS. SARTORIS: YES, YOUR HONOR. PRECISELY.

4 IT'S THE GOVERNMENT'S BURDEN TO PROVE
5 THAT THE DEFENDANT WAS KNOWLEDGEABLE ABOUT EXPORT
6 RESTRICTIONS AND KNOWLEDGEABLE ABOUT THAT HE WAS
7 VIOLATING THEM. HE WILLFULLY VIOLATED THE EXPORT LAWS
8 WHEN HE OPTED NOT TO SEEK A LICENSE FROM THE DEPARTMENT
9 OF COMMERCE.

10 AND HIS TRAINING AND EXPERIENCE AND
11 KNOWLEDGE ON EXPORT COMPLIANCE ISSUES GENERALLY ARE
12 HIGHLY RELEVANT TO HIS -- THE GOVERNMENT'S POSITION
13 THAT HE DID VERY WELL KNOW WHAT HE WAS DOING.

14 AND I THINK THIS IS, AGAIN, REFLECTED IN
15 A LOT OF THE EXAMINATION THAT WE SEE FROM DEFENSE OF
16 MR. MONROY WHERE HE'S -- A LOT OF -- THE QUESTIONING
17 ALONG THE LINES OF HE WAS A RESEARCHER AND HE DIDN'T
18 KNOW OR ONE MIGHT NOT KNOW ALONG THOSE LINES. SO HERE
19 IS AN EXAMPLE OF, HE WORKED FOR HONEYWELL AND WAS AWARE
20 OF THESE CONCERNS.

21 THE COURT: ALL RIGHT. THANK YOU,
22 MS. SARTORIS.

23 MR. HANUSZ?

24 MR. HANUSZ: SO AS A -- JUST A FOUNDATIONAL
25 MATTER, THERE ARE NO FOUNDATIONAL OBJECTIONS TO THESE

1 EXHIBITS. YOUR HONOR IS CORRECT IN THAT THERE AREN'T
2 DATES ON SOME OF THEM. A NUMBER OF THEM - AND I CAN
3 DIRECT YOUR HONOR TO SPECIFIC EXAMPLES - HAVE LIKE
4 QUIZZES WITH -- SO I WILL DIRECT YOUR HONOR TO PAGES 18
5 TO 27 OF EXHIBIT 1672. AND I'M GOING OFF THE NUMBER AT
6 THE BOTTOM RIGHT-HAND CORNER.

7 THE COURT: BATES NUMBER 22066?

8 MR. HANUSZ: CORRECT, YOUR HONOR.

9 SO THIS IS AN EXAMPLE. SO WE HAVE KIND
10 QUIZ SLIDES, WHICH ARE PRETTY COMMON IN THESE SORTS
11 OF -- NO IDEA WHO FILLED THE QUIZ OUT OR WHEN. MY
12 GUESS IS PROBABLY HONEYWELL. I DON'T KNOW IF HONEYWELL
13 HAS RECORDS OR NOT OF THE ANSWERS THAT WERE SUBMITTED.
14 WE JUST DON'T KNOW. I THINK THAT'S THE ISSUE.

15 THE COURT: OKAY.

16 MR. HANUSZ: SO THIS IS ALSO PRESENT IN THE
17 LAST FIVE PAGES OF 1674.

18 SOME OF THESE POWER POINTS HAVE DATES.
19 SOME OF THEM DO NOT.

20 THE COURT: ALL RIGHT. I UNDERSTAND.

21 MR. HANUSZ: I HAVE NO REASON TO THINK THAT,
22 YOU KNOW -- IN ANY EVENT, THE BIGGER ISSUE, YOUR HONOR,
23 IS, THESE DOCUMENTS ARE REplete WITH TERMS LIKE ITAR
24 WITH MISSILES.

25 CERTAINLY, MR. MONROY WANTED TO TALK A

1 LOT ABOUT ITAR LAST WEEK EVEN THOUGH IT'S NOT AN ISSUE
2 IN THIS CASE. THIS -- MR. MONROY'S TESTIMONY CONFIRMS
3 THE PROBLEM IN CONTINUING TO TALK ABOUT ITAR, WHICH HAS
4 NEVER BEEN CHARGED. IT HAS NEVER BEEN ALLEGED. BUT
5 THERE ARE ALL SORTS OF REDACTIONS, YOUR HONOR, THAT THE
6 DEFENSE SUBMITS WOULD NEED TO OCCUR.

7 THE COURT: I UNDERSTAND.

8 MY VIEW IS THIS, I DON'T HAVE FULL
9 INFORMATION.

10 BUT, FIRST, TO THE EXTENT THAT THESE
11 EXHIBITS CONTAIN INFORMATION -- SOME INFORMATION THAT
12 IS NOT RELEVANT OR WHOSE RELEVANCE IS OUTWEIGHED BY ITS
13 PREJUDICIAL EFFECT, THEY SHOULD BE REDACTED.

14 SECOND, TO THE EXTENT THAT THESE
15 DOCUMENTS HAVE -- SOME OF THE DOCUMENTS HAVE QUIZ
16 ANSWERS. ABSENT EVIDENCE THAT THESE ANSWERS WERE ONES
17 MADE BY THE DEFENDANT, THEY SHOULD BE REDACTED. IN
18 OTHER WORDS, THERE SHOULD BE NO ANSWERS.

19 THIRD, THESE -- IT'LL BE -- IT'LL BE
20 NECESSARY TO SHOW A FOUNDATIONAL BASIS THAT IT'S
21 REASONABLE TO FIND THAT THE -- THESE PARTICULAR POWER
22 POINT MATERIALS AS -- PUTTING ASIDE REDACTIONS -- WERE
23 ONES THAT WERE DISPLAYED TO OR PROVIDED OR MADE
24 AVAILABLE TO THE DEFENDANT. NOT JUST THAT THESE ARE
25 THE GENERAL MATERIALS THAT THE COMPANY HAD -- THAT

1 HONEYWELL HAD.

2 SO I THINK WITH THAT IN MIND, I WOULD
3 OVERRULE THE OBJECTION AS A WHOLE AND SAY THAT I
4 KNOW -- I DON'T THINK THERE'S A BASIS TO EXCLUDE THESE
5 DOCUMENTS IN THEIR ENTIRETY. BUT IF THEY'RE ADMITTED,
6 THEY WOULD BE SUBJECT TO REDACTION AND SUBJECT TO A
7 SHOWING THAT THEY -- THERE'S A REASONABLE BASIS TO
8 CONCLUDE, OR FOR A JURY TO FIND, THAT THEY WERE SEEN BY
9 THE DEFENDANT.

10 AND JUST TO MAKE CLEAR, REDACTING
11 PORTIONS OF IT THAT ARE 403. IF HE'S SHOWN -- IF
12 THERE'S SOMETHING THAT IS IN THEM THAT ISN'T -- THAT'S
13 403, IT SHOULD BE REDACTED.

14 MR. HANUSZ: YOUR HONOR, IF I MAY FLAG MORE
15 ISSUES? A NUMBER OF THESE DOCUMENTS ARE STAMPED WITH
16 "SUBJECT TO PROTECTIVE ORDER." WE WOULD ASK FOR THAT
17 TO BE REDACTED.

18 THE DEFENSE AND THE GOVERNMENT MAY NOT BE
19 ABLE TO AGREE ON APPROPRIATE REDACTIONS. I'M FLAGGING
20 THAT AS AN ISSUE FOR THE COURT. THE GOVERNMENT HAS
21 ALREADY INDICATED THAT IT SEES NO PROBLEMS WITH SOME OF
22 THE TERMS IDENTIFIED BY THE DEFENSE.

23 WE MAY BE BACK WITH THE SAME ISSUE WITH
24 MR. PASCO, BUT I'M JUST -- I WANTED TO FLAG IT FOR YOUR
25 HONOR.

1 THE COURT: THAT'S FINE.

2 FIRST, AS YOU KNOW, THE JURY IS NOT GOING
3 TO GET COPIES OF EXHIBITS UNTIL THEY'RE ADMITTED AND
4 PRESENTED TO THE JURY IN THE JURY ROOM.

5 AND EVEN IF I ALLOWED THE PUBLICATION OF
6 AN EXHIBIT, THAT DOESN'T MEAN THAT IT COULDN'T THEN BE
7 MODIFIED PRIOR TO THE END OF THE CASE WHEN SUBMITTED TO
8 THE JURY TO REFLECT A REDACTION.

9 TO THE EXTENT THAT THERE IS A DISPUTE
10 ABOUT AN EXHIBIT AND WHETHER SOMETHING SHOULD BE
11 REDACTED, AND THAT I CAN'T RESOLVE PROMPTLY AT THE TIME
12 OF THE TESTIMONY, IT SHOULD BE REDACTED. AND THEN I
13 CAN -- I MEAN, LET ME BE CLEAR:

14 TO THE EXTENT IT'S SOMETHING THAT --
15 BEFORE IT'S PUBLISHED, I WOULD HAVE THAT REDACTED.
16 THAT DOESN'T MEAN THE WITNESS CAN'T EXAMINE IT AND
17 TESTIFY ABOUT IT. BUT BEFORE IT'S PUBLISHED, THAT
18 PORTION SHOULD BE REDACTED BECAUSE, OTHERWISE, I'M NOT
19 IN A POSITION TO MAKE A RULING.

20 IN TERMS OF OBJECTIONS AND MOVING THIS
21 PROCESS FORWARD, THERE MAY BE A DISPUTE ABOUT ONE
22 REDACTION THAT THE DEFENSE THINKS WOULD BE HIGHLY
23 PREJUDICIAL IF EVER PUBLISHED TO THE JURY. EVEN IF
24 IT'S LATER REDACTED, THERE MAY BE A DIFFERENT VIEW BY
25 THE DEFENSE AS TO ANOTHER REDACTION. SO IN TERMS OF

1 EFFICIENCY HERE, IF THERE ARE DISPUTES ABOUT
2 REDACTIONS, KEEP THAT IN MIND.

3 MR. HANUSZ: I CAN IDENTIFY A NUMBER OF TERMS
4 NOW, YOUR HONOR, IF THE COURT WOULD LIKE.

5 THE COURT: I DON'T HAVE ALL AFTERNOON TO DO
6 THIS.

7 MR. HANUSZ: UNDERSTOOD.

8 THE COURT: WHAT I'M SAYING IS, JUST AS I DID
9 DURING THE CROSS-EXAMINATION, SOME THINGS CAN BE
10 REVIEWED BY A WITNESS AND NOT PUBLISHED AND SO ON. I
11 CAN DEAL WITH IT IN THAT RESPECT.

12 BUT I THINK I'VE GIVEN YOU THE
13 GUIDELINES.

14 MR. HANUSZ: FOR THOSE TERMS THAT THE DEFENSE
15 BELIEVES ARE SUBJECT TO 403 EXCEPTIONS, WE WILL MAKE
16 ANY OBJECTIONS TO THE WITNESS READING THE DOCUMENT.

17 THE COURT: THAT'S FINE. I DON'T HAVE A
18 PROBLEM WITH THAT AT THE MOMENT.

19 HOW LONG IS THE LIST OF -- HOW MANY WORDS
20 ARE THERE OR TERMS ARE THERE THAT ARE DISPUTED?

21 MR. HANUSZ: THERE AREN'T MANY, YOUR HONOR.
22 BUT THEY'RE TERMS THAT APPEAR REPEATEDLY. SO ITAR,
23 ANTI-TERRORISM. THERE'S A SLIDE, "SPACE MISSILES AND
24 MUNITIONS."

25 THE UNIVERSE OF TERMS IS LIMITED, BUT

1 THERE'S JUST A LOT OF PAGES. AND THEY APPEAR NUMEROUS
2 TIMES.

3 THE COURT: WHY DO TERMS ABOUT MISSILES OR
4 OTHER THINGS HAVE TO BE -- WHY CAN'T THEY BE REDACTED?

5 MS. SARTORIS: YOUR HONOR, THAT'S ACTUALLY AN
6 EXAMPLE OF -- SO TWO ISSUES.

7 FIRST OF ALL, THE GOVERNMENT UNDERSTANDS
8 THE COURT'S CONCERNS AND WILL ENDEAVOR TO LOOK THROUGH
9 THE EXHIBITS AND DEFINITELY LAY THE FOUNDATION THAT THE
10 COURT REQUESTED AND CONSIDER DEFENSE OBJECTIONS AND THE
11 COURT'S CONCERNS.

12 THESE ARE BUSINESS DOCUMENTS AND, AS A
13 WHOLE, WERE SHOWN TO DEFENDANT. SO REDACT -- IT'S --
14 REDACTING THINGS DEFENDANT WAS EXPOSED TO WHEN IT'S
15 PART OF THE OVERALL LIKE EXPORT CONTROL REGIME,
16 ESPECIALLY WHEN YOU'RE DISCUSSING THINGS THAT COULD
17 HAVE MILITARY APPLICATIONS, THEY'RE HIGHLY RELEVANT TO
18 THE CASE.

19 FOR EXAMPLE, WITH RESPECT TO MISSILES AND
20 SPACE --

21 THE COURT: WHAT EXHIBIT?

22 MS. SARTORIS: WELL, YOUR HONOR, THE ONE
23 THAT -- I DON'T KNOW OFFHAND, THE ONE THAT DEFENSE
24 COUNSEL RAISED --

25 MR. HANUSZ: 1675, YOUR HONOR.

1 MS. SARTORIS: WITH RESPECT TO THE U.S.
2 COMPANY B WAFERS, HE -- AND HIS POWER POINTS SLIDES --
3 THE POWER POINT SLIDES THAT DEFENDANT HAS PREPARED IN
4 THIS CASE AND HIS OTHER BUSINESS PLANS DISCUSS SPACE
5 USE OF THE -- SPACE GOALS FOR CHENGDU GASTONE, MISSILE
6 USE OF THESE WAFERS. I MEAN, THESE ARE ITEMS THAT ARE
7 NOT BROUGHT IN GRATUITOUSLY BY THE GOVERNMENT IN POWER
8 POINT SLIDES. THESE ARE NOT ONLY THINGS THAT HONEYWELL
9 SHOWED HIM, BUT ALSO THEY'RE IN LINE WITH THE EVIDENCE
10 IN THIS CASE AND THE TYPES -- SOME OF THE TYPES OF
11 BUSINESSES THAT CHENGDU GASTONE WAS INVOLVED IN OR
12 LOOKING TO BE INVOLVED IN.

13 AND I CAN DIRECT COURT JUST OFF-HAND TO
14 GOVERNMENT'S EXHIBIT 2017. I BELIEVE IT'S A POWER
15 POINT SLIDE THAT SHOWS MISSILES AND SATELLITES IN SPACE
16 AS HE'S TALKING ABOUT CHENGDU GASTONE'S BUSINESS.

17 MR. HANUSZ: THIS POWER POINT HAS NOTHING TO
18 DO WITH MISSILES. THE ONLY TIME MISSILES APPEARS IN
19 THIS DOCUMENT IS ON THE COVER PAGE.

20 THE ONLY PAGE THAT THE GOVERNMENT IS
21 REALLY INTERESTED IN THE JURY SEEING IS THE COVER PAGE.
22 THE OTHER -- THE REST OF IT DOESN'T RELATE AT ALL TO
23 ANYTHING SPECIFIC TO MISSILES.

24 OUR POSITION IS, IT'S ENTIRELY 403, YOUR
25 HONOR. IT'S NOT RELEVANT TO ANYTHING.

1 AND IT'S JUST ABOUT GETTING THESE TWO
2 WORDS, "MISSILES AND MUNITIONS," IN FRONT OF THE JURY.

3 THE COURT: OKAY.

4 MR. HANUSZ: AND I WOULD NOTE THAT THIS HAS NO
5 DATE ON IT EITHER.

6 THE COURT: WELL, WITH RESPECT TO, AS AN
7 EXAMPLE, 1675, THE FIRST PAGE OF THE EXHIBIT WHICH HAS
8 BATES NUMBER 22777, AS WELL AS BATES NUMBER FROM
9 HONEYWELL, HON, ENDING IN 1456, I DON'T KNOW WHY MORE
10 THAN THE FIRST LINE WOULD BE NEEDED.

11 OR MAYBE THE FIRST LINE OF THE FIRST TWO
12 WORDS OF THE NEXT LINE.

13 IN OTHER WORDS, "PROPRIETARY AND
14 SENSITIVE INFORMATION SECURITY PRESENTATION."

15 WHY DO WE NEED MORE?

16 AGAIN, THIS CASE IS NOT ABOUT WHETHER
17 SOMETHING SHOULD BE PROPERLY LISTED. IT'S ABOUT
18 WHETHER THERE WAS A WILLFUL KNOWING EXPORT OF AN ITEM
19 THAT WAS ON THE LIST.

20 MS. SARTORIS: YOUR HONOR, I JUST DIDN'T TRACK
21 WHERE YOU WERE LOOKING. I KNOW YOU WERE READING, AND I
22 JUST DIDN'T TRACK.

23 THE COURT: EXHIBIT 1675, THE FIRST PAGE,
24 WHICH IS THE TITLE PAGE.

25 MS. SARTORIS: RIGHT.

1 THE COURT: AFTER THE WORD "PRESENTATION," WHY
2 IS THE REMAINING LANGUAGE NEEDED?

3 MS. SARTORIS: YOUR HONOR, SO WITH RESPECT TO
4 "SPACE" AND "MISSILES," JUST, FOR EXAMPLE, THOSE ARE
5 ITEMS THAT DEFENDANT WAS TALKING ABOUT AND FOCUSED ON
6 WITH CHENGDU GASTONE. AND SO THE FACT THAT HE HAD
7 AWARENESS THAT -- IN THIS REALM THAT THIS IS SPECIAL
8 SENSITIVE INFORMATION IS IMPORTANT TO -- FOR THE
9 GOVERNMENT TO PROVE WILLFULNESS. WE HAVE TO PROVE THAT
10 THE DEFENDANT ACTED WILLFULLY HERE. AND HIS KNOWLEDGE
11 OF THE SENSITIVE NATURE OF THE ITEMS HE WAS WORKING ON
12 IS SOMETHING THAT THE GOVERNMENT MUST ESTABLISH.

13 THE COURT: AGAIN, IT'S DIFFICULT TO MAKE A
14 CONCLUSIVE DETERMINATION ABOUT ALL OF THESE EXHIBITS AT
15 THIS TIME. AS I'VE STATED, I HAVE OTHER THINGS GOING
16 ON TODAY. SO I CAN'T SPEND THE ENTIRE AFTERNOON GOING
17 THROUGH EACH OF THESE EXHIBITS LINE BY LINE.

18 BUT AT THE MOMENT, I THINK THAT'S
19 SOMETHING THAT COULD BE REDACTED FROM WHAT I KNOW ABOUT
20 THE PURPOSE OF THIS. THE PURPOSE BEING, TO SHOW THAT
21 THERE WAS TRAINING OFFERED -- OR PROVIDED TO THE
22 DEFENDANT WITH RESPECT TO THE LIMITATIONS ON EXPORTS OF
23 CERTAIN ITEMS -- EITHER ITEMS OR -- TO CERTAIN
24 COUNTRIES OR TO CERTAIN ENTITIES, AND THAT IT WAS DONE
25 KNOWINGLY AND WILLFULLY. I DON'T KNOW THAT SOME OF

1 OTHER ELEMENTS HERE ARE NECESSARY TO SHOW THAT.

2 AND THERE'S A 403 ISSUE. I'VE SAID THIS
3 BEFORE AS TO THE CHINESE MILITARY, SO I DON'T THINK
4 THIS IS NEW.

5 SO WITH THAT IN MIND, PERHAPS YOU CAN
6 TAKE ANOTHER PASS THROUGH THE DOCUMENTS. TO THE EXTENT
7 THERE REMAIN ISSUES ABOUT WHAT SHOULD OR SHOULD NOT BE
8 REDACTED, I'LL HAVE TO LOOK AT THEM. BUT FOR PRESENT
9 PURPOSES, DO YOUR BEST.

10 MS. SARTORIS: THANK YOU, YOUR HONOR.

11 MR. HANUSZ: THANK YOU, YOUR HONOR.

12 THE COURT: I KNOW YOU HAVE BEEN WORKING HARD
13 AND COLLABORATIVELY TO NARROW ISSUES.

14 THE NEXT IS 1202 AND 1203.

15 IS THAT DIFFERENT?

16 MR. HANUSZ: WE'VE COVERED THOSE, YOUR HONOR.

17 THE COURT: THEN WE HAVE A LOT OF EXHIBITS
18 WITH RESPECT TO MILLER?

19 MR. HANUSZ: CORRECT, YOUR HONOR.

20 THE COURT: ARE THEY ALL UNIQUE?

21 MR. HANUSZ: THEY -- SOME OF THEM ARE UNIQUE.
22 THERE ARE MORE CATEGORIES, YOUR HONOR, WHICH I'M HAPPY
23 TO FLAG IF THE COURT WANTS TO --

24 THE COURT: WHAT ARE THE ISSUES?

25 MR. HANUSZ: SO THESE ALL RELATE TO --

1 MS. MILLER WILL TESTIFY ABOUT ITEMS THAT WERE RECOVERED
2 FROM DR. SHIH'S HOME IN THE SEARCH. SO ALL OF -- SO
3 THE UNIVERSE OF ITEMS IS, I DON'T KNOW, MAYBE 150
4 EXHIBITS. WE HAVE NO FOUNDATIONAL OBJECTIONS TO ANY OF
5 THOSE EXHIBITS. NONE.

6 OKAY. SO THE OBJECTIONS WE HAVE -- SO
7 THERE ARE A COUPLE. SO THERE ARE RELEVANCE. FOR
8 EXAMPLE, THE GOVERNMENT WANTS TO INTRODUCE -- WOULD
9 LIKE TO INTRODUCE DR. SHIH'S PASSPORT CARD, WHICH
10 CONTAINS NO INFORMATION, HIS DRIVER'S LICENSE FROM
11 THE -- FROM CHINA. AGAIN, IT'S MORE OF A DUPLICATIVE
12 AND JUST KIND OF -- OUR POSITION IS, IT'S DUPLICATIVE
13 AND IRRELEVANT.

14 THE OTHER CLASS OF OBJECTIONS RELATES TO
15 FINANCIAL RECORDS THAT WERE RECOVERED FROM DR. SHIH'S
16 HOME. AND SO THE ISSUE HERE -- THE COURT DEALT WITH A
17 RESIDUAL HEARSAY -- WITH THE RESIDUAL HEARSAY ISSUE AS
18 IT RELATED TO BANK RECORDS.

19 THE GOVERNMENT PREVIOUSLY, IN A LETTER TO
20 THE DEFENSE AND IN ITS FILING WITH THE COURT,
21 REPRESENTED WHAT THOSE DOCUMENTS CONSISTED OF, WHAT THE
22 UNIVERSE OF BANK RECORDS CONSISTED OF. THE GOVERNMENT
23 DID NOT INCLUDE -- THESE DOCUMENTS WERE NOT INCLUDED IN
24 THAT UNIVERSE OF BANK RECORDS.

25 SO I WILL SAY, I'M NOT SURE OUR OBJECTION

1 IS A WHOLE LOT DIFFERENT, YOUR HONOR. BUT TO THE
2 EXTENT THAT -- I UNDERSTAND THE COURT'S RULING
3 PREVIOUSLY. WE'RE NOT ASKING THE COURT TO REVISIT
4 THAT. BUT THESE WERE NOT INCLUDED IN THE COURT'S PRIOR
5 RULING.

6 SO WE'VE LITIGATED THIS BEFORE. THE
7 GOVERNMENT'S HAD AN OPPORTUNITY TO PRESENT THESE TO THE
8 COURT, TO PRESENT ARGUMENT. IT HAS NOT WITH RESPECT TO
9 THESE DOCUMENTS.

10 THE COURT: DO YOU THINK THIS IS THE SAME
11 ISSUE AS THE ONE THAT WAS PREVIOUSLY ADDRESSED?

12 MR. HANUSZ: SO OUR OBJECTION WOULD PRIMARILY
13 BE THE SAME, YOUR HONOR.

14 THE COURT: MR. HUGHES?

15 MR. HUGHES: WITH REGARD TO THE ADDITIONAL
16 FINANCIAL EXHIBITS, THE REASON THAT THEY WERE NOT
17 DISCLOSED IN THE LETTER REGARDING EXHIBITS THAT WE WERE
18 SEEKING TO ADMIT UNDER THE RESIDUAL HEARSAY EXCEPTION
19 IS BECAUSE TWO OF THE THREE OF THESE DOCUMENTS ARE
20 ACTUALLY APPLICATIONS AND/OR FINANCIAL PROFILES THE
21 DEFENDANT ACTUALLY SIGNED AS PART OF HIS INITIAL
22 PAPERWORK SETTING UP THIS ACCOUNT. THEY ARE PARTY
23 ADMISSIONS.

24 THEY'RE NOT COVERED UNDER THE RESIDUAL
25 HEARSAY EXCEPTION BECAUSE THESE ARE STATEMENTS HE IS

1 MAKING TO THE BANK IN ORDER TO OPEN HIS ACCOUNT.

2 MR. HANUSZ: YOUR HONOR, THE PARTY ADMISSION
3 ISSUE WAS ADDRESSED IN THE SAME MOTION. AND THESE
4 DOCUMENTS WERE NOT REFERENCED. THEY HAVE NOT BEEN
5 REFERENCED TO DATE. THIS IS THE FIRST TIME THEY'VE
6 BEEN REFERENCED.

7 THE COURT: CAN YOU -- WHAT'S AN EXHIBIT
8 NUMBER THAT'S AN EXAMPLE?

9 MR. HANUSZ: AN EXHIBIT NUMBER -- SO IT WOULD
10 BE 707, 716 AND --

11 MR. HUGHES: 754, YOUR HONOR.

12 MR. HANUSZ: YOUR HONOR, I WOULD NOTE THE
13 GOVERNMENT MADE THE SAME PARTY ADMISSION ARGUMENT IN
14 THE PRIOR BRIEFING. AND THE COURT REJECTED THAT.

15 MR. HUGHES: AS A POINT OF CLARIFICATION, YOUR
16 HONOR, THOSE DOCUMENTS WERE NOT SIGNED.

17 THE DOCUMENTS THAT WERE REFERENCED IN OUR
18 PREVIOUS ARGUMENT REGARDING PARTY ADMISSIONS, WE HAD
19 ARGUED FOR THAT BASED ON ADOPTIVE ADMISSION BASED ON
20 POSSESSION PLUS.

21 THESE ARE DOCUMENTS, THEY'RE PHYSICALLY
22 SIGNED BY THE DEFENDANT. HE'S INCLUDED INFORMATION IN
23 THEM. THE GOVERNMENT JUST BELIEVES IT IS CRYSTAL CLEAR
24 THAT THESE ARE PARTY ADMISSIONS.

25 THE COURT: TO WHAT -- WELL, LOOKING AT

1 EXHIBIT 754, WHAT'S ITS RELEVANCE?

2 MR. HUGHES: IN THIS, YOUR HONOR, THE
3 DEFENDANT HAS PROVIDED INFORMATION -- ONE, IT'S
4 RELEVANT SIMPLY TO SHOW THAT THE DEFENDANT HAS OPENED
5 THIS ACCOUNT.

6 AND, TWO, IT IS RELEVANT TO SHOWING THE
7 PURPOSE OF THE ACCOUNT.

8 DEFENSE COUNSEL HAS STATED THAT THIS
9 ACCOUNT WAS OPENED PURELY TO HOLD FUNDS THAT WERE BEING
10 HELD IN TRUST BY THE DEFENDANT.

11 THIS IS RELEVANT TO SHOWING THE ACTUAL
12 PURPOSE OF OPENING THE ACCOUNT, WHICH WAS INVESTING THE
13 FUNDS, AS WELL AS SHOWING REPRESENTATIONS MADE BY THE
14 DEFENDANT TO THE BANK IN ORDER TO OPEN THAT ACCOUNT.

15 IF I COULD DIRECT YOU TO BATES NUMBERED
16 PAGE 872141. IF YOU LOOK AT QUESTION 1 IN THE
17 QUESTIONNAIRE THAT'S BEEN FILLED OUT, DEFENDANT HAS
18 FALSELY REPRESENTED TO THE BANK THAT HE IS NOT A
19 UNITED STATES CITIZEN, AND HE DOES NOT RESIDE IN THE
20 UNITED STATES.

21 THE EVIDENCE HAS SHOWN DEFENDANT WAS BOTH
22 A UNITED STATES CITIZEN AND RESIDING IN THE
23 UNITED STATES WHEN THESE REPRESENTATIONS WERE MADE.

24 MR. HANUSZ: ONE OF THE ISSUES HERE, YOUR
25 HONOR, IS, THESE DIDN'T COME FROM THE BANK. WE DON'T

1 KNOW WHETHER THESE WERE -- WE DON'T KNOW WHAT
2 REPRESENTATIONS WERE MADE TO THE -- IT'S JUST -- THE
3 PROBLEM IS WITH THESE DOCUMENTS, NUMBER ONE, THEY
4 WEREN'T ADDRESSED BEFORE.

5 BUT, NUMBER TWO, THE GOVERNMENT IS
6 OFFERING THEM FOR THE TRUTH OF THE MATTER ASSERTED.
7 AND WE DON'T KNOW WHAT, IF ANY, REPRESENTATIONS WERE
8 MADE.

9 MR. HUGHES: THE POSITION OF GOVERNMENT IS
10 UNCHANGED. THESE ARE SIGNED DOCUMENTS FOUND IN THE
11 DEFENDANT'S RESIDENCE.

12 THE COURT: WHERE IS 754 SIGNED?

13 MR. HUGHES: IF YOU COULD TURN TO PAGE 872143
14 ABOVE "CUSTOMER SIGNATURE."

15 MR. HANUSZ: I WOULD NOTE THAT THAT'S NOT IN
16 ENGLISH. I DON'T KNOW IF WE'LL HAVE TESTIMONY
17 REGARDING THE TRANSLATION. I DON'T THINK THIS IS A
18 DOCUMENT THAT'S BEEN SUBMITTED FOR TRANSLATION.

19 THE COURT: I UNDERSTAND YOUR POSITION.

20 THERE'S A NAME BELOW THAT. IT'S IN ALL
21 CAPS.

22 I'M GOING TO OVERRULE THE OBJECTION WITH
23 RESPECT TO THESE RECORDS ON THE SAME -- THESE RECORDS
24 THAT WERE OBTAINED -- AS I UNDERSTAND IT, THE ISSUE
25 BEING, THE RECORDS OBTAINED DURING THE SEARCH OF THE

1 DEFENDANT'S RESIDENCE, I'M GOING TO OVERRULE THE
2 OBJECTION TO THEM THAT'S BEEN RAISED AS TO THE
3 FINANCIAL RECORDS WHERE THE DEFENDANT HAD SIGNED THEM
4 OR THERE'S SOME OTHER INDICIA OF AUTHENTICITY FROM THE
5 RECORDS, WHICH I THINK I PREVIOUSLY ADDRESSED.

6 SECOND, WITH RESPECT TO THE PASSPORT, IS
7 IT A PASSPORT CARD THAT DOES NOT SHOW TRAVEL, OR IS IT
8 A PASSPORT THAT DOES REFLECT VISA STAMPS?

9 MR. HANUSZ: IT DOES NOT ADDRESS TRAVEL. IT'S
10 LIKE A DRIVER'S LICENSE -- IT LOOKS LIKE A DRIVER'S
11 LICENSE, YOUR HONOR.

12 MS. SARTORIS: I THINK WITH THE REMAINING
13 BUCKET OF THE OBJECTIONS THAT THE DEFENDANT RAISED,
14 WE'LL JUST HAVE TO LOOK AT THEM ONE BY ONE BECAUSE
15 EACH -- THEY DON'T REALLY FIT INTO A BUCKET. THEY'RE
16 INDIVIDUAL OBJECTIONS.

17 BUT WITH RESPECT TO THAT ONE, THE
18 GOVERNMENT, UPON RECEIVING DEFENDANT'S OBJECTIONS AND
19 HAVING CONTEMPLATED THE PRIOR-FILED OBJECTIONS, DOES
20 NOT OBJECT TO NOT INTRODUCING IT INTO EVIDENCE. SO WE
21 DO NOT NEED TO INTRODUCE THAT PARTICULAR CARD INTO
22 EVIDENCE.

23 THE COURT: WHAT ABOUT THE DRIVER'S LICENSE?

24 MS. SARTORIS: YOUR HONOR, THE DRIVER'S
25 LICENSE IS VIEWED DIFFERENTLY.

1 THE COURT: WHAT EXHIBIT IS THAT, PLEASE?

2 MR. HANUSZ: 727, YOUR HONOR.

3 THE COURT: THANK YOU.

4 MS. SARTORIS: SO, YOUR HONOR, THE DRIVER'S
5 LICENSE -- I'M TURNING TO IT MYSELF.

6 THE GOVERNMENT WOULD SEEK TO INTRODUCE
7 THE DRIVER'S LICENSE. IT IS DIFFERENT IN KIND TO THE
8 PASSPORT CARD, WHICH IS A CARD THAT DOESN'T SHOW ANY
9 TRAVEL BY THE DEFENDANT IN PARTICULAR.

10 HERE, WE HAVE A DRIVER'S LICENSE THAT HAS
11 DEFENDANT'S PHOTOGRAPH. AND IT SHOWS THAT IT WAS
12 ISSUED ON JULY 10TH, 2013.

13 IT COVERS A PERIOD OF TIME BEYOND THAT.
14 AND IT'S A DRIVER'S LICENSE FOR THE PEOPLE'S REPUBLIC
15 OF CHINA.

16 THIS HELPS THE GOVERNMENT TO ESTABLISH
17 THAT DEFENDANT WAS THERE. HE WAS LIVING THERE AND WAS
18 INVESTED TO A DEGREE OF, HE EVEN WENT TO GET A DRIVER'S
19 LICENSE.

20 THE JURY IS GOING TO BE SEEING A LOT OF
21 DOCUMENTS IN THIS CASE. AND I THINK SOME OF THE JURORS
22 MIGHT FIND IT VALUABLE TO SEE A DRIVER'S LICENSE WITH A
23 PHOTOGRAPH ON IT. I MEAN, THAT IS A UNIQUE PIECE OF
24 EVIDENCE, WHICH COULD GIVE THEM A DATA POINT OF
25 UNDERSTANDING THE DEFENDANT LIVED THERE.

1 THE COURT: WELL, IS IT DISPUTED BY THE
2 DEFENDANT THAT HE WAS IN CHINA?

3 MR. HANUSZ: IT'S NOT, YOUR HONOR.

4 THE COURT: WHEN HE WAS THE PRESIDENT OF THE
5 ENTITY THERE, IS THAT WHEN -- I MEAN, AMONG OTHER
6 TIMES, HE WAS THERE AT THAT TIME?

7 MR. HANUSZ: RIGHT.

8 THE PRIMARY OBJECTION IS, JUST THIS
9 DOESN'T SHOW ANYTHING. THERE'S NO FUNDAMENTAL
10 DIFFERENCE OF OPINION, YOUR HONOR.

11 MS. SARTORIS: YOUR HONOR, THERE IS NO
12 PREJUDICE TO THE DRIVER'S LICENSE TO THE DEFENDANT,
13 PARTICULARLY IF DEFENSE THINKS IT DOESN'T SHOW
14 ANYTHING.

15 IT'S THE GOVERNMENT'S POSITION THAT IT
16 DOES SHOW DEFENDANT WITH HIS PICTURE ON A DOCUMENT
17 ISSUED BY THE PEOPLE'S REPUBLIC OF CHINA. THAT SHOWS
18 THAT HE WAS LIVING THERE AND HAD A DRIVER'S LICENSE,
19 WHICH DOES GO TO ESTABLISH HIS INVESTMENT IN LIVING
20 OVERSEAS.

21 MR. HANUSZ: THE GOVERNMENT IS SEEKING TO
22 INTRODUCE HIS PASSPORT, WHICH HAS A VISA IN IT. AT
23 SOME POINT, IT'S JUST TOO MUCH.

24 THE COURT: THEY'VE WITHDRAWN THE PASSPORT.

25 MR. HANUSZ: THE CARD. WE'VE --

1 THE COURT: JUST A MINUTE.

2 WITH RESPECT TO EXHIBIT 727, I WOULD
3 SUSTAIN -- I WILL SUSTAIN THE OBJECTION FOR THIS
4 REASON:

5 PUTTING ASIDE THE AUTHENTICITY, WHICH I
6 DON'T THINK IS DISPUTED. AND ASSUMING THIS WOULD BE
7 TRANSLATED, WHICH I ASSUME WOULDN'T BE AN ISSUE,
8 PUTTING THAT -- SO NOT ON THOSE GROUNDS, BUT IT'S 403
9 GROUNDS.

10 I DON'T THINK THE PROBATIVE VALUE OF THIS
11 OUTWEIGHS ITS POTENTIAL PREJUDICIAL EFFECT BECAUSE A
12 JUROR MIGHT CONCLUDE, UPON SEEING A DRIVER'S LICENSE
13 THAT IS STILL VALID ACCORDING TO THE DATES HERE, JULY
14 10, 2019, IT COULD LEAD TO AN INFERENCE OF SOME
15 RELATIONSHIP BETWEEN THE DEFENDANT AND THE PEOPLE'S
16 REPUBLIC OF CHINA THAT I DON'T THINK IS -- THAT I THINK
17 RAISES THE PREJUDICIAL ISSUE THAT -- WHEN IT'S NOT
18 NEEDED BECAUSE IT'S NOT REALLY BEING OFFERED FOR
19 ANYTHING -- THE -- IT'S BEING OFFERED TO SHOW THAT HE
20 WAS IN CHINA, WHICH ISN'T DISPUTED. THAT'S MY
21 THINKING.

22 AND I'M NOT GUIDED -- NEVER MIND.

23 MR. HANUSZ: YOUR HONOR, I THINK THE COURT
24 JUST PUT THE FINGER ON KIND OF THE TOTALITY OF THE
25 ISSUES THAT THE DEFENSE RAISES HERE TODAY. IT'S A

1 THREAD THAT RUNS THROUGH MR. MATTIS, THROUGH THE
2 GOVERNMENT'S OPENING, THROUGHOUT THIS CASE. IT'S ABOUT
3 CHINA. AND THAT'S -- AND THE MORE IT'S ABOUT CHINA AND
4 NOT ABOUT DR. SHIH, THAT'S A PROBLEM.

5 THE COURT: OKAY. I UNDERSTAND.

6 MR. HANUSZ: THAT'S ALL I'LL SAY.

7 THE COURT: THE CASE DOES, OBVIOUSLY, INVOLVE
8 CHINA BECAUSE THE ENTITIES ARE IN -- THE ITEMS WERE
9 ALLEGEDLY EXPORTED THERE AND -- DIRECTLY OR INDIRECTLY.
10 AND THE ENTITY LIST RELATES TO THAT COUNTRY. IT'S
11 NOT -- THERE IS RELEVANCE TO THE COUNTRY OF CHINA. I'M
12 JUST LOOKING AT THIS DRIVER'S LICENSE, AND I DON'T FIND
13 A COMPELLING REASON TO ALSO -- I THINK, IF I'M NOT
14 MISTAKEN, IN THIS PHOTOGRAPH, OBVIOUSLY, THE DEFENDANT
15 HAS A MUSTACHE. I DON'T THINK HE PRESENTLY DOES.

16 IS THAT RIGHT?

17 MR. HANUSZ: I THINK THAT'S CORRECT, YOUR
18 HONOR.

19 MS. SARTORIS: HE DID ONLY REMOVE HIS MUSTACHE
20 AS TO THE LAST HEARING, BUT I DON'T KNOW --

21 THE COURT: WHETHER HE USED TO HAVE A MUSTACHE
22 OR NOT IS NOT RELEVANT TO THIS CASE. THAT'S MY POINT.

23 MS. SARTORIS: YOUR HONOR, THE DEFENSE DID
24 FILE A NUMBER OF OBJECTIONS. IT IS TRUE, WE'VE GREATLY
25 NARROWED. THERE ARE JUST A FEW LEFT.

1 THE COURT: WHAT ARE THEY?

2 MS. SARTORIS: SO WE COULD GO THROUGH THEM.

3 WITH RESPECT TO 687, THE GOVERNMENT --

4 THE COURT: EXCUSE ME.

5 WHICH ARE THE REMAINING ONES, 687 AND
6 WHAT ELSE?

7 MS. SARTORIS: 687, 690, 691 AND 696.

8 I BELIEVE WE'VE COVERED 707.

9 THE COURT: THERE'S 10 MORE AFTER THAT.

10 HOW MANY MORE DO YOU THINK I NEED TO
11 RESOLVE RIGHT NOW?

12 MS. SARTORIS: 718, 725, 726 AND THEN 787-A.

13 THERE ARE A COUPLE THAT THE DEFENDANT
14 OBJECTED TO THAT THE GOVERNMENT AGREED WE WILL NOT
15 ADMIT.

16 THE COURT: THE ONES IN WHICH YOU THINK THE
17 RULINGS ARE NEEDED ARE: 687, 690, 691, 696, 718, 725,
18 726 AND 787-A?

19 MS. SARTORIS: THE GOVERNMENT WILL AGREE TO
20 NOT INTRODUCE 687.

21 THE COURT: SO IT'S THE SEVEN OTHERS, 690
22 THROUGH 787-A.

23 MR. HANUSZ: I'M NOT SURE -- I'M HAPPY TO
24 LEAVE IT TO THE COURT, BUT I'M NOT SURE THE COURT NEEDS
25 TO RESOLVE THESE RIGHT NOW. TOTALLY UP TO THE COURT,

1 OBVIOUSLY.

2 THERE IS ONE EXHIBIT, WHICH IS A C.D. I
3 THINK THAT WAS 736. BASED ON CONVERSATIONS I HAD WITH
4 MR. SHOBAKI, I BELIEVE THE GOVERNMENT IS GOING TO
5 WITHDRAW THAT EXHIBIT.

6 MS. SARTORIS: THAT'S CORRECT.

7 MR. HANUSZ: IT WAS A PHOTO COPY OF A
8 MINI-DISC.

9 MS. SARTORIS: THAT'S CORRECT.

10 THE COURT: ARE ALL THESE SEVEN EXHIBITS ONES
11 THAT YOU EXPECT TO OFFER TOMORROW OR SHOW WITNESSES
12 TOMORROW?

13 MS. SARTORIS: IF MS. MILLER IS ON THE STAND,
14 THEN, YES.

15 THE COURT: WHAT'S THE ISSUE ON 690?

16 MR. HANUSZ: I BELIEVE THAT'S AN
17 E-MAIL FROM --

18 THE COURT: IT'S A LETTER, FEBRUARY 21, 2007,
19 SIGNED BY THE DEFENDANT?

20 MS. SARTORIS: YES, YOUR HONOR.

21 AND DEFENSE OBJECTED ON HEARSAY AND
22 RELEVANCE GROUNDS.

23 I THINK THE HEARSAY GROUND COULD BE
24 ADDRESSED BY THE FACT THIS IS A DOCUMENT SIGNED BY
25 DEFENDANT. SO IT'S NOT HEARSAY.

1 AND WITH RESPECT TO RELEVANCE, THIS
2 DOCUMENT SHOWS DEFENDANT ADVISING -- DISCUSSING
3 CONTRASTS THAT HE HAD WHILE AT MMCOMM WITH CERTAIN
4 MILITARY ENTITIES IN THE UNITED STATES. AND IT GOES TO
5 A COUPLE OF DIFFERENT THINGS.

6 ONE IS, DEFENDANT, AS PRESIDENT OF
7 MMCOMM, HE HAS KNOWLEDGE OF MILITARY CONTRACTS AND
8 EXPERIENCE IN THE REALM.

9 HE IS ARGUING, IT APPEARS, THAT HE'S SORT
10 OF A SIMPLE RESEARCHER. AND BASED ON SOME OF THE
11 OBJECTIONS AND JURY INSTRUCTIONS THE DEFENDANT IS
12 PROPOSING, ONE MIGHT THINK THAT THAT IS WHAT HE'S GOING
13 TO TRY TO ASK THE JURY TO BELIEVE, IS THAT THAT'S ALL
14 HE WAS DOING, OR PERHAPS THAT HE WAS WORKING ON CELL
15 PHONES OR ELECTRONIC VEHICLES. WE SHOULD BE ABLE TO
16 SHOW THAT HIS WORK EXPERIENCE INVOLVED MILITARY
17 CONTRACTS.

18 THE COURT: MMCOMM WAS THE ENTITY OWNED BY THE
19 DEFENDANT THAT HE SOLD TO HONEYWELL?

20 MS. SARTORIS: YES, YOUR HONOR.

21 THIS DOCUMENT EVEN SAYS HE WAS PRESIDENT
22 OF IT.

23 MR. HANUSZ: WE'LL WITHDRAW THE HEARSAY
24 OBJECTION.

25 BUT IN TERMS OF, I THINK IT'S RELEVANCE

1 AND 403, WE KNOW NOTHING ABOUT THE NATURE OF THESE
2 CONTRACTS. AND FOR ALL ANYONE KNOWS, THESE CONTRACTS
3 RELATE TO COMMUNICATIONS -- NON-MILITARY COMMUNICATIONS
4 DEVICES.

5 IT'S A CLEAR 403 ISSUE. IT'S ALL ABOUT
6 GETTING NAVAL RESEARCH, AIR FORCE RESEARCH,
7 WRIGHT-PATTERSON IN FRONT OF THE JURY WITHOUT ANY
8 CONTEXT FOR WHAT THESE CONTRACTS CONSISTED OF.

9 THE COURT: WHY IS IT RELEVANT THAT THE
10 DEFENDANT SOLD MMCOMM TO HONEYWELL AND THAT, AT THE
11 TIME OF THE SALE, THERE WERE CERTAIN CONTRACTS IN PLACE
12 BETWEEN MMCOMM AND THESE GOVERNMENTAL ENTITIES?

13 MS. SARTORIS: YOUR HONOR, THE DEFENDANT --
14 YOU MAY RECALL FROM THE OPENING STATEMENT, THE DEFENSE
15 COUNSEL DISCUSSING HOW DEFENDANT HAS A LONG HISTORY.
16 AND WHEN HE GOT TO THE PORTION OF ABOUT HOW HE WENT TO
17 WORK FOR CHENGDU GASTONE, THE DISCUSSION WAS, WELL, OF
18 COURSE, THEY NEEDED AN ENGINEER, AND SO THEY HIRED HIM
19 BECAUSE OF HIS EXPERIENCE.

20 AND I THINK THE GOVERNMENT HAS AN
21 OBLIGATION TO HELP THE JURY TO UNDERSTAND SOME OF THE
22 EXPERIENCE THE DEFENDANT HAD, BECAUSE WHAT WILL ALSO BE
23 INTRODUCED INTO EVIDENCE, THROUGH DEFENDANT'S E-MAILS
24 AND POWER POINTS, ARE DISCUSSIONS OF COMMERCIAL AND
25 MILITARY USES AND OBJECTIVES OF CHENGDU GASTONE. SO

1 THE GOVERNMENT CAN SHOW THAT THIS IS ACTUALLY -- THE
2 MILITARY ASPECT IS WITHIN THE EXPERIENCE OF DEFENDANT.
3 IT IS CONSISTENT WITH HIS EXPERIENCE THAT HE HAD THIS
4 KNOWLEDGE OF INVOLVEMENT IN MILITARY. HE WASN'T
5 SOMEBODY WHO WAS JUST DOING ELECTRIC CARS OR CELL
6 PHONES.

7 MR. HANUSZ: WITHOUT ANY CONTEXT FOR THOSE
8 CONTRACTS, YOUR HONOR, IT'S A CLEAR 403 ISSUE.

9 THE COURT: I UNDERSTAND.

10 I'M GOING TO OVERRULE THE OBJECTION TO
11 THIS ON THE -- I THINK THIS -- TO BE CLEAR, THAT
12 DOESN'T MEAN THERE'S -- I'M GOING TO -- THERE'S GOING
13 TO BE A LOT OF TESTIMONY ABOUT THIS OR TESTIMONY ABOUT
14 WHAT THESE CONTRACTS WERE. I DON'T HAVE THAT IN MIND
15 AT ALL.

16 IT'S SIMPLY THAT THIS IS PART OF THE SALE
17 OF THE ENTITY TO HONEYWELL. AND IT DOES -- I THINK IT
18 DOES -- IT'S -- THE 403 ISSUE IS ADDRESSED BECAUSE OF
19 THE ASSERTION BY THE DEFENDANT HERE THAT THE ACTIONS
20 HERE INVOLVED ACADEMIC, NOT COMMERCIAL WORK, AMONG
21 OTHER THINGS.

22 WHAT'S THE NEXT ONE, 691?

23 IS THAT DIFFERENT?

24 MS. SARTORIS: YES, YOUR HONOR.

25 DEFENDANT HAS OBJECTED TO THIS ONE ON

1 HEARSAY AND RELEVANCE GROUNDS AS WELL.

2 HERE, AGAIN, WE HAVE A FORM. IT'S FILLED
3 OUT BY DEFENDANT, HIS HANDWRITING. AND SO, AGAIN, THE
4 HEARSAY ISSUE SHOULD BE RESOLVED FOR THAT REASON AS
5 DEFENDANT'S STATEMENT.

6 THIS DOCUMENT, THE RELEVANCE IS VERY --
7 WHEN THE COURT HAS AN OPPORTUNITY TO GO THROUGH IT, YOU
8 WILL SEE IT SHOWS DEFENDANT'S KNOWLEDGE OF EXPORT
9 CONTROLS. HE CHECKS, IN LINE 1, THAT THE COMPANY THAT
10 HE IS SELLING TO HONEYWELL EXPORTED GOODS IN
11 TECHNOLOGIES. LINE 2 DESCRIBES HOW IT HAD COMMODITIES
12 THAT WERE SUBJECT TO THE E.A.R. IT SHOWS DEFENDANT AS
13 ONE OF THE EXPORT COMPLIANCE PERSONNEL.

14 THE COURT: I UNDERSTAND.

15 MR. HANUSZ?

16 MR. HANUSZ: SO A COUPLE OF THINGS.

17 FIRST OF ALL, IT'S NOTABLE THAT THIS
18 WASN'T INCLUDED IN THE MATERIALS THAT WERE -- WAS
19 RECEIVED BY THE GOVERNMENT FROM HONEYWELL. BUT OUR
20 OBJECTIONS HEARSAY. ITS RELEVANCE. DON'T KNOW WHEN
21 THIS WAS FILLED OUT. I UNDERSTAND THE GOVERNMENT'S
22 CONTENTION THAT IT WAS DR. SHIH.

23 THE COURT: WELL, MY VIEW ON THIS IS SIMILAR,
24 THAT I WOULD OVERRULE THE OBJECTION.

25 IT'S A DOCUMENT THAT WAS OBTAINED FROM

1 THE RECORDS OF DR. SHIH. I THINK IT DOES -- IT HAS HIS
2 NAME WRITTEN IN IT. WHO WROTE IT? I DON'T KNOW. AND
3 THAT'S ON PAGE 1. THERE'S A HANDWRITTEN STATEMENT
4 THERE.

5 I THINK THIS DOES -- HIS NAME APPEARS
6 ELSEWHERE ON THE THIRD PAGE OF THE DOCUMENT. I DON'T
7 KNOW -- AGAIN, I HAVE NO IDEA WHOSE HANDWRITING THAT
8 IS. BUT I THINK THIS DOES BEAR ON THE ISSUE OF
9 WILLFULNESS AND KNOWLEDGE.

10 IS THE NEXT ISSUE 696?

11 MR. HANUSZ: YES, YOUR HONOR.

12 MS. SARTORIS: THIS IS A DOCUMENT OBJECTED TO
13 ON HEARSAY AND RELEVANCE.

14 THE GOVERNMENT IS NOT OFFERING IT FOR THE
15 TRUTH OF THE MATTER ASSERTED, BUT INSTEAD FOR THE
16 EFFECT ON THE DEFENDANT. IT'S AN E-MAIL SENT TO HIM,
17 FOUND IN HIS RESIDENCE THAT HE RECEIVED, PRINTED OUT
18 AND HAD STORED AT HIS HOUSE.

19 AND IT GOES TO SHOW THAT, WHEN HE LEFT
20 HONEYWELL, THAT HONEYWELL REMINDED THEM THAT THEY HAD
21 PROPRIETARY RIGHTS THAT HE NEEDED TO ADHERE TO, THAT HE
22 HAD -- WAS NOT TO DISCLOSE INFORMATION RELATING TO
23 HONEYWELL'S BUSINESSES AS HE LEFT THE COMPANY.

24 THE COURT: WHY IS THAT RELEVANT TO THE ISSUES
25 HERE?

1 MS. SARTORIS: IT'S RELEVANT BECAUSE WE HAVE
2 U.S. COMPANY B HERE WHO THE GOVERNMENT HAS ALLEGED THAT
3 DEFENDANT DEFRAUDED. AND IT GOES TO SHOW, AGAIN, TO
4 PAINT THE WHOLE PICTURE OF DEFENDANT SHIH AS A
5 KNOWLEDGEABLE BUSINESSMAN WHO UNDERSTOOD THAT WHEN HE'S
6 OPERATING IN THESE TYPES OF BUSINESSES, THAT THERE'S
7 VERY SENSITIVE TECHNOLOGY AND BUSINESSES AT PLAY.

8 THE COURT: I WOULD SUSTAIN THE OBJECTION.
9 403.

10 THIS IS LARGELY -- I INTERPRET THIS
11 LARGELY AS A FORM LETTER.

12 IT DOES REMIND THE DEFENDANT OF CERTAIN
13 OBLIGATIONS THAT HE HAS, PERHAPS PURSUANT TO A WRITTEN
14 EMPLOYMENT AGREEMENT. BUT IT'S REFERRING TO HIS
15 TERMINATION FROM HONEYWELL.

16 MS. SARTORIS: YOUR HONOR, HE RESIGNED.

17 THE COURT: IT SAYS, "THE OBLIGATION SURVIVES
18 THE TERMINATION OF YOUR EMPLOYMENT HERE."

19 I THINK THE PROBATIVE VALUE IS OUTWEIGHED
20 BY THE POTENTIAL PREJUDICIAL EFFECT. AND I DON'T THINK
21 THAT I'M PERSUADED THIS BEARS, THE WAY THE OTHER
22 DOCUMENT DOES, ON THE ISSUE OF KNOWLEDGE ABOUT EXPORT
23 CONTROLS.

24 SO THAT TAKES US TO, WHAT, 718?

25 MR. HANUSZ: YES, YOUR HONOR.

1 MS. SARTORIS: YOUR HONOR, THIS IS RELEVANT
2 BECAUSE IT SHOWS -- IT'S A DOCUMENT WRITTEN BY THE
3 DEFENDANT. AND IN IT, HE IS WRITING DOWN, IN HIS OWN
4 HANDWRITING, THAT HE IS PRESIDENT AND CEO OF CHENGDU
5 GASTONE AND WHAT HIS SALARY IS. SO IT ESTABLISHES THE
6 DEFENDANT, IN HIS OWN HANDWRITING, THAT HE WORKS THERE.

7 THE COURT: IS THAT DISPUTED?

8 MR. HANUSZ: NO.

9 THE COURT: IS HIS SALARY DISPUTED?

10 MR. HANUSZ: NO.

11 MS. SARTORIS: WE DO HAVE TAX ALLEGATIONS IN
12 THIS CASE.

13 BUT I WILL ALSO TELL YOU THAT IT'S
14 RELEVANT FOR ANOTHER REASON. FOR EXAMPLE, WHEN WE WERE
15 LOOKING AT THE PRIOR EXHIBIT, 691, AND BOTH DEFENSE
16 COUNSEL AND THE COURT OPINED THAT IT WASN'T CLEAR WHO
17 WROTE THE DOCUMENT.

18 WHEN YOU LOOK AT THIS DOCUMENT, THE WAY
19 THAT THE WORD "YEARS" IS WRITTEN, IT MATCHES THE WAY
20 THE WORD "YEARS" IS WRITTEN ON THE OTHER DOCUMENT. SO
21 THERE ARE TIMES WHEN WE'RE INTRODUCING DEFENDANT'S
22 DOCUMENTS WHERE THE JURY -- HAVING SOME SAMPLING OF HIS
23 WRITING, IT WILL BE HELPFUL FOR THE JURY TO UNDERSTAND
24 AND JUDGE WHO WROTE WHICH DOCUMENTS.

25 THE COURT: JUST A MINUTE.

1 WITH RESPECT TO THE SALARY, DOES THAT --
2 YOU MENTIONED THE TAX COUNTS.

3 IS THE SALARY -- DO YOU CONTEND THAT THE
4 SALARY IS RELEVANT TO THE TAX COUNTS?

5 MR. HUGHES: NO, YOUR HONOR.

6 THE AMOUNT OF THE TRADITIONAL SALARY
7 RECEIVED BY DEFENDANT FROM THE CHENGDU GASTONE IS NOT
8 IN DISPUTE IN THIS CASE.

9 THE COURT: OKAY. THEN I DON'T SEE THE -- IN
10 TERMS OF COMPARING HANDWRITING, YOU'RE RIGHT,
11 LAYPERSONS CAN COMPARE SIGNATURES. AND FROM THAT, ONE
12 COULD INFER THEY CAN COMPARE HANDWRITING. BUT I THINK
13 THAT'S A PRETTY LIMITED REASON TO ADMIT THIS.

14 AND IT'S TALKING ABOUT GUARANTEEING THE
15 OBLIGATION OF A NEPHEW. I JUST DON'T SEE THAT THE
16 RELEVANT -- WHAT THE RELEVANCE IS. AND, THEREFORE, I
17 DON'T HAVE TO GET TO THE SOCIAL SECURITY NUMBER AND THE
18 NEED TO REDACT IT. SO I'LL EXCLUDE THIS.

19 WHAT'S THE NEXT ONE?

20 MR. HANUSZ: 725, YOUR HONOR.

21 725 AND 726 ARE SIMILAR, YOUR HONOR.

22 THE COURT: OKAY. THESE WERE, AGAIN, OBTAINED
23 FROM THE DEFENDANT'S RESIDENCE?

24 MR. HANUSZ: CORRECT, YOUR HONOR.

25 THE COURT: IS IT DISPUTED WHO WROTE THEM?

1 MR. HANUSZ: IT'S NOT, YOUR HONOR.

2 THE COURT: DID THE DEFENDANT WRITE THEM?

3 MR. HANUSZ: IT APPEARS SO.

4 THE COURT: SO WHAT'S THE RELEVANCE?

5 MS. SARTORIS: YOUR HONOR, YOU'LL NOTE, WITH
6 RESPECT TO CONCERNS ABOUT PROVIDING TOO MUCH TO THE
7 JURY, THE GOVERNMENT HAS REALLY MADE AN EFFORT TO
8 REDUCE THE AMOUNT OF INFORMATION THAT IT'S PROVIDING TO
9 THE JURY FROM DEFENDANT'S RESIDENCE. THERE WAS VOLUMES
10 OF INFORMATION SEIZED.

11 WITH RESPECT TO THIS NOTEBOOK, THIS FIRST
12 NOTEBOOK, EXHIBIT 725, THE ONE PAGE OF THIS ENTIRE
13 NOTEBOOK IS WHAT THE GOVERNMENT IS OFFERING TO
14 INTRODUCE.

15 AND THAT'S BECAUSE THE GOVERNMENT WANTS
16 TO SHOW THAT, IN THIS PAGE, THAT MMCOMM, IN DEFENDANT'S
17 OWN NOTES, HE WRITES "50 PERCENT COMMERCIAL AND 50
18 PERCENT MILITARY." AND UNDERNEATH THE "MILITARY," HE
19 "WRITES RADAR DESIGN" AND "ADVANCED MODULE."

20 THIS IS HIGHLY RELEVANT TO THE WORK HE
21 WAS DOING AT CHENGDU GASTONE, WHICH ALSO APPEARS TO
22 HAVE HAD A COMMERCIAL AND MILITARY DUAL USE.

23 THIS IS THE WORLD THAT HE WORKED IN. HE
24 WAS FAMILIAR WITH IT. HE HAD A LONG HISTORY OF
25 EMPLOYMENT. AND THIS IS HIS OWN BUSINESS DOING 50

1 PERCENT COMMERCIAL AND 50 PERCENT MILITARY BASED ON HIS
2 OWN NOTES.

3 MR. HANUSZ: YOUR HONOR, NONE OF THESE
4 DOCUMENTS GO TO THE ISSUE OF WHETHER DR. SHIH WORKED
5 FOR CHENGDU GASTONE. THEY'RE IRRELEVANT TO THE
6 LICENSING COUNT, WHICH IS REALLY WHAT COUNTS 1 AND 2
7 ARE.

8 IT'S ALSO WORTH NOTING THAT MMCOMM CEASED
9 TO EXIST AS A CORPORATION WELL BEFORE DR. SHIH BEGAN
10 ANY EMPLOYMENT WITH CGTC, WHICH WOULD HAVE BEEN IN
11 2011. AND MMCOMM CEASED TO EXIST, I BELIEVE, IN 2007.

12 MS. SARTORIS: YOUR HONOR, THAT'S IN THE TIME
13 PERIOD OF THE CONSPIRACY.

14 THE COURT: JUST A MINUTE.

15 BUT MMCOMM WAS ACQUIRED BY HONEYWELL.
16 AND THEN DR. SHIH CONTINUED TO WORK FOR HONEYWELL
17 FOLLOWING THE SALE?

18 MR. HANUSZ: CORRECT.

19 THE COURT: WAS HE CONTINUING TO DO THE SAME
20 SORT OF THINGS THAT HE HAD PREVIOUSLY DONE IN
21 CONNECTION WITH MMCOMM?

22 MR. HANUSZ: WE CAN'T -- NOT PREPARED TO SPEAK
23 TO THAT, YOUR HONOR.

24 THE BIGGER ISSUE IS JUST, IT'S THE
25 MILITARY REFERENCES IN THIS DOCUMENT THAT --

1 THE COURT: IN OUR -- IN THE PRIOR -- SOME
2 TIME AGO AND TODAY, WE WERE DISCUSSING THE ISSUE OF
3 LINKAGE. I DID THAT IN MY COLLOQUY WITH MR. ROLLINS.
4 AND I WAS LOOKING FOR EVIDENCE THAT WOULD LINK THE
5 DEFENDANT WITH PARTICULAR ENTITIES ABOUT WHICH THE
6 EXPERT MIGHT TESTIFY.

7 IT SEEMS TO ME THE SAME LOGIC APPLIES
8 HERE. THIS IS SAYING THAT AT THE TIME MMCOMM -- MMCOMM
9 WAS OPERATING, IT WAS DOING SOME WORK WITH THE
10 MILITARY. WHAT THAT IS? I CAN'T TELL.

11 BUT LET'S ASSUME, HYPOTHETICALLY, IT WAS
12 GOVERNMENT CONTRACTING TO PROVIDE CERTAIN THINGS TO THE
13 MILITARY. I'M NOT QUITE -- I THINK IT'S A PRETTY
14 TENUOUS LINK TO LINK DR. -- THE DEFENDANT TO AN ENTITY
15 AT ISSUE HERE THAT WOULD SHOW -- THAT GOES, AGAIN, TO
16 HIS KNOWLEDGE ABOUT EXPORTING AN ITEM FOR WHICH A
17 LICENSE WAS REQUIRED.

18 MS. SARTORIS: YOUR HONOR, IF I MAY?

19 THE CONSPIRACY AND THE DEFENDANT'S WORK
20 AT CHENGDU GASTONE, WHEN YOU LOOK AT THE DOCUMENTS WITH
21 RESPECT TO CHENGDU GASTONE, AND IN PARTICULAR LIKE SOME
22 OF THE POWER POINT SLIDES, THEY SHOW AN INTENT. THEY
23 SHOW CELL PHONES, AND THEY SHOW MISSILES.

24 AND SO THE GOVERNMENT ANTICIPATES THAT
25 DEFENDANT MIGHT SAY, RIGHT, THAT I WAS INTERESTED IN

1 THE CELL PHONES, AND THAT'S MY HISTORY. AND I THINK
2 THE GOVERNMENT NEEDS THE OPPORTUNITY TO ESTABLISH THAT
3 THE DEFENDANT HAS A HISTORY OF WORKING AND LOOKING AND
4 THINKING IN BUSINESS IN TERMS OF COMMERCIAL AND
5 MILITARY APPLICATIONS, JUST AS HE DID AT CHENGDU
6 GASTONE, WHICH IS PART OF THE CONSPIRACY.

7 THE COURT: MY VIEW ON THIS IS THE FOLLOWING:

8 I DON'T HAVE MUCH INFORMATION ABOUT WHEN
9 THIS WAS GENERATED. AND FOR THE REASONS THAT I'VE
10 EXPLAINED, I THINK THAT RAISES ISSUES IN TERMS OF
11 RELEVANCE.

12 BUT I WOULD SAY THE FOLLOWING: THE
13 GOVERNMENT CAN RENEW ITS REQUEST. AND I WILL REVIEW,
14 AGAIN, MY CURRENT RULING THAT -- TWO THINGS.

15 ONE, IF YOU -- THAT THIS COULD BE
16 INTRODUCED, BUT WITH THE "MILITARY" REDACTED SO THERE'S
17 NOT A REFERENCE TO THAT.

18 BUT, SECOND, TO THE EXTENT THAT THE
19 DEFENDANT OPENS THE DOOR IN THE PRESENTATION OF
20 CROSS-EXAMINATION OR, HYPOTHETICALLY, IN THE
21 DEFENDANT'S CASE, WERE THE DEFENDANT ELECT TO PRESENT
22 ONE, BEYOND THE LIMITED DIRECT EXAMINATION OF ONE
23 WITNESS, WHICH WE'VE ALREADY ADDRESSED, I WOULD REVIEW
24 IT AGAIN AND SEE WHETHER THE DOOR HAS BEEN OPENED TO A
25 CLAIM THAT, THROUGHOUT THE -- THAT THROUGHOUT

1 DEFENDANT'S TIME AT WORK, INCLUDING AT MMCOMM, THIS WAS
2 ALL ABOUT CIVILIAN COMMUNICATIONS, ACADEMIC WORK,
3 NOTHING TO DO WITH THESE OTHER AREAS, THEN I WOULD
4 RECONSIDER THIS.

5 MS. SARTORIS: FOR MY CLARIFICATION, YOUR
6 HONOR, FOR PURPOSES OF SPECIAL AGENT MILLER'S
7 TESTIMONY, WOULD THE COURT THEN BE AMENABLE TO NOT
8 SHOWING IT TO THE JURY OR DISCUSSING IT, BUT JUST
9 HAVING HER STATE THAT THE NOTEBOOK WAS RECOVERED FROM
10 THE LOCATION. AND THAT WAY, THE GOVERNMENT CAN MOVE IT
11 INTO EVIDENCE AT A LATER POINT IF THE DOOR IS OPENED?

12 MR. HANUSZ: NO OBJECTION, YOUR HONOR.

13 THE COURT: YOU CAN DO THAT. THAT'S FINE.

14 726?

15 MR. HANUSZ: 726 WAS DEALT WITH, YOUR HONOR.
16 THAT WAS THE DRIVER'S LICENSE -- I'M SORRY, 726 --

17 THE COURT: NO.

18 726 ARE TWO MORE PAGES FROM THE
19 NOTEBOOKS.

20 MR. HANUSZ: SORRY, THAT'S RIGHT.

21 SO SAME SIMILAR OBJECTION, YOUR HONOR. I
22 THINK THE COURT CAN LOOK AT THESE IN TANDEM.

23 MS. SARTORIS: THEY ARE SLIGHTLY DIFFERENT.
24 726, IT'S A DIFFERENT NOTEBOOK.

25 BUT, HERE THE PAGES THAT ARE REFLECTED IN

1 THIS EXHIBIT ARE ONES THAT DIRECTLY DISCUSS EXPORT
2 RESTRICTIONS. SO DEFENDANT'S WRITING ABOUT EMBARGOES,
3 END USERS, THE ENTITY LIST, RESTRICTIONS ON FOREIGN
4 PURCHASES.

5 THE COURT: I UNDERSTAND.

6 MR. HANUSZ: IT ALSO HAS "NAVY" AT THE TOP.

7 THE COURT: I WOULD ADMIT THIS DOCUMENT, BUT
8 REDACT "NAVY."

9 I CAN'T TELL WHAT THAT'S A REFERENCE TO.
10 THAT "NAVY" AND THE "4024 HAD A SIGNED COPY," I DON'T
11 KNOW WHAT THAT MEANS.

12 DO YOU KNOW WHAT THAT MEANS?

13 MS. SARTORIS: I DON'T, YOUR HONOR. IT'S
14 DEFENDANT'S NOTES.

15 IN THE CONTEXT HERE, IT LOOKS LIKE IT IS
16 THE HEADING. HE'S TALKING ABOUT THINGS REFLECTING
17 THAT.

18 BUT THE MAIN PURPOSE HERE IS REALLY TO
19 SHOW NOTES ABOUT DEFENDANT'S SOPHISTICATION WITH
20 RESPECT TO EXPORT RESTRICTIONS.

21 THE COURT: I'LL ADMIT 726 WITH THAT
22 REDACTION.

23 THAT LEAVES 787-A.

24 MR. HANUSZ: THIS WAS A DISCOVERY CUTOFF
25 ISSUE, YOUR HONOR.

1 MS. SARTORIS: YOUR HONOR, I THINK THAT WAS
2 ALREADY ADDRESSED BY THE COURT'S PRIOR STATEMENT ABOUT
3 THE DISCOVERY CUTOFF.

4 BUT WITH RESPECT TO THIS ONE IN
5 PARTICULAR, I WILL ALSO NOTE, IT WAS PRODUCED ON -- IN
6 DRAFT FORM TO DEFENSE COUNSEL ON MARCH 14TH AND, AGAIN,
7 ON APRIL 10TH, AND THEN A FINAL FORM ON APRIL 28TH,
8 WHICH WOULD BE PRIOR TO THE MAY 1ST CUTOFF.

9 THE COURT: OKAY. IS THERE AN OBJECTION,
10 OTHER THAN TIMING?

11 MR. HANUSZ: THERE'S NOT, YOUR HONOR.

12 THE COURT: I'D OVERRULE THE OBJECTION ON
13 THAT.

14 MR. HANUSZ: LASTLY, THE GOVERNMENT IS
15 INTENDING TO USE VISUAL AIDS WITH AGENT WESTBY
16 TOMORROW. THERE ARE FOUR POWER POINT SLIDES. THE
17 DEFENSE OBJECTS TO THE USE OF THESE AS JUST NOT
18 NECESSARY. IT'S NOT A WEALTH OF INFORMATION THAT'S
19 BEING SUMMARIZED.

20 MR. ROLLINS: WE CAN WAIT TO TAKE THIS UP FOR
21 THE BREAK TOMORROW.

22 MR. HANUSZ: IF THE GOVERNMENT WANTS TO HAVE
23 THESE SLIDES IN THE CLOSING ARGUMENT, NO ONE WILL
24 OBJECT TO THAT. BUT WITH A WITNESS --

25 THE COURT: I'LL HAVE TO EVALUATE IN THE

1 CONTEXT OF THE TESTIMONY. I DON'T THINK THIS IS THE
2 MOST DRAMATIC OF THE ISSUES WE'VE ADDRESSED TODAY.

3 MR. HANUSZ: I WOULD AGREE WITH THAT, YOUR
4 HONOR.

5 THE COURT: I'LL SEE YOU TOMORROW.

6 MR. SHOBAKI: THANK YOU, YOUR HONOR.

7 MR. HANUSZ: IF WE MAY ASK THE GOVERNMENT FOR
8 AN ORDER OF WITNESSES ON WEDNESDAY AS WELL TO ROUND OUT
9 THE WEEK?

10 THE COURT: ANY OBJECTION TO THAT?

11 MR. SHOBAKI: I DON'T KNOW WHAT IT IS, BUT
12 WE'LL FIGURE IT OUT.

13 DOES THE COURT ORDER TO FIGURE IT OUT TWO
14 DAYS IN ADVANCE?

15 THE COURT: WELL, YOU KNOW OR YOU HAVE A
16 REASONABLE BASIS TO KNOW. LET THEM KNOW SO THAT
17 EVERYBODY CAN BE PREPARED, AND WE CAN MOVE FASTER.

18 MR. HANUSZ: THANK YOU, YOUR HONOR. WE WOULD
19 PRIORITIZE ANY REMAINING OBJECTIONS BASED ON WITNESSES,
20 YOUR HONOR.

21 **(END OF PROCEEDINGS)**

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